TITLE 68 INDIANA GAMING COMMISSION

Proposed Rule
LSA Document #01-23

DIGEST

Amends 68 IAC 2-2-1 to conform the rule to a directive from the legislature by deleting the requirement that a supplier of alcoholic beverages is required to hold a supplier's license. Adds 68 IAC 2-2-9.5 requiring supplier licensees and supplier license applicants to: (1) maintain records; and (2) allow the Indiana gaming commission access to those records. Amends 68 IAC 2-3-5 to clarify who should retain possession of occupational licenses and badges at the various phases of licensure. Amends 68 IAC 2-6-6 to require a riverboat licensee requesting permission to convert an electronic gaming device to inform the commission of the regular fill amount, initial fill amount, and probe level measured from the top of the hopper. Amends 68 IAC 3-3-6 to change the date by which the riverboat licensees and license applicants must submit reports concerning the performance of their continuing obligation to meet the minority and women owned business goals established in IC 4-33-14-5. Riverboat licensees and license applicants will be required to file reports reflecting expenditures made during the previous calendar year by January 31 of the following year. Amends 68 IAC 10-2-1 to correct an error in that rule and bring the rules in line with the standard rules for the game of blackjack. Amends 68 IAC 11-2-7 to clarify that meter-reading reports need only be submitted to the commission on a monthly basis. Amends 68 IAC 11-5-1 to correct the conflict with 68 IAC 15-4-3 so that secondary chip inventories will be rotated and counted on a monthly basis. Amends 68 IAC 14 to require that all table layouts have the name of the riverboat licensee imprinted on the layout. Adds 68 IAC 14-3-8 to require riverboat licensees to keep logs in association with card and dice removal and cancellation and to specify the requirements of those logs. Amends 68 IAC 15-2-3 and 68 IAC 15-2-4 to revise the information required to be included on Currency Transaction Reports so it will agree with the revised Internal Revenue Service Currency Transaction Report form. Amends 68 IAC 15-4 to specify the manner in which suppliers and riverboats must ship chips and tokens. Amends 68 IAC 15-4-3 to require commission approval of procedures for performing chip inventories and sealing and accessing of locked compartments used for the storage of chips or tokens. Amends 68 IAC 15-7-3 to: (1) eliminate the need for riverboat licensees to investigate variances of $500 in electronic gaming device win; and (2) to correct an error of word choice in 68 IAC 15-7-3. Amends 68 IAC 15-8-1 to require the internal audit department to include at least two on-site internal auditors and to stipulate that quarterly reports of compliance testing shall identify repeat findings and state corrective action taken to avoid similar problems in the future. Amends 68 IAC 15-8-2 to include review of the card and dice removal and cancellation logs to the duties of the internal auditors. Adds 68 IAC 15-14 to: (1) stipulate the qualifications and conditions that must be included in all engagement arrangements a riverboat makes with independent accounting agencies to perform financial statement audits; and (2) to specify requirements for notice to the commission about such audits and their progress. Effective 30 days after filing with the secretary of state.

68 IAC 2-2-1
68 IAC 2-2-9.5
68 IAC 2-3-5
68 IAC 2-6-6
68 IAC 3-3-6
68 IAC 10-2-1
68 IAC 11-2-7
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68 IAC 15-7-3
68 IAC 15-8-1
68 IAC 15-8-2
68 IAC 15-14

SECTION 1. 68 IAC 2-2-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-2-1 Supplier's license required
Authority: IC 4-33-4-1; IC 4-33-4-2
Affected: IC 4-33-7

Sec. 1. (a) The following definitions apply throughout this rule:

(1) "Applicant" means an applicant for a supplier's license.

(2) "Riverboat license applicant" means an applicant for a riverboat owner's license that has been issued a certificate of suitability under 68 IAC 2-1-5.

(b) An application for a supplier's license shall not be processed by the commission unless the applicant has an agreement or a statement of intent with a riverboat licensee or a riverboat license applicant that the applicant will be supplying the riverboat licensee upon receiving the supplier's license. Nothing in this rule prevents a potential applicant from negotiating, prior to application for licensure, with a riverboat licensee or a riverboat license applicant to supply goods and services to a riverboat licensee once a supplier's license has been obtained.

(c) The following persons or business entities are required to hold a supplier's license:

(1) The gaming operations manager if the manager is a business entity. If the gaming operations manager is an individual, the applicant shall hold an occupational license, Level 1 under 68 IAC 2-3-1. All employees of a gaming operations manager who have any duty, authority, or function relating directly or indirectly to the gaming operation will be required to hold an occupational license in accordance with 68 IAC 2-3-1.

(2) All manufacturers of electronic gaming devices, chips, tokens, cards, dice, roulette wheels, keno balls, keno ball or number selection devices, shuffling devices, and any other

equipment that the commission determines directly affects gaming shall be licensed as a supplier. All suppliers of electronic gaming devices, chips, tokens, cards, dice, roulette wheels, keno balls, keno ball or number selection devices, shuffling devices, and any other equipment that the commission determines directly affects gaming shall be manufacturers of said devices.

(3) A supplier of gaming equipment maintenance or repair.

(4) A supplier of security services, security systems, and surveillance systems.

(5) A lessor of a riverboat or dock facilities, or both, unless the lessor of the riverboat or dock facilities, or both, is a county, municipality, or political subdivision.

(6) A supplier of goods or services where payment is calculated on a percentage of a riverboat gambling operation's revenues.

(7) A junketeer.

~~(8) A supplier of alcoholic beverages to the riverboat licensee.~~

~~(9)~~ **(8)** Any other purveyor of goods or services to a riverboat gambling operation the commission deems necessary to ensure compliance with the Act and this title.

(d) The applicant's key persons, substantial owners, and any other persons deemed necessary to allow the commission to ensure the applicant meets the statutory criteria for licensure set forth in the Act and this title must complete and submit a Personal Disclosure Form 1 under 68 IAC 2-3-1.

(e) A supplier licensee shall continue to maintain suitability for licensure. The supplier licensee is subject to action by the commission, including, but not limited to, suspension, revocation, restriction, and nonrenewal under the Act and this title.

(f) A supplier licensee shall not distribute gaming supplies and equipment that do not conform to the standards for gaming supplies and equipment set forth in the Act and this title.

(g) Riverboat licensees shall not purchase goods or services covered by this rule from a person who does not hold a supplier's license issued by the commission.

(h) A manufacturer of electronic gaming devices, chips, tokens, cards, dice, roulette wheels, keno balls, keno ball or number selection devices, shuffling devices, or any other equipment that the commission determines directly affects gaming shall not be paid by a riverboat licensee based on a percentage of the revenue received from the use of the gaming equipment or based upon the amount of play or use that the gaming equipment receives. *(Indiana Gaming Commission; 68 IAC 2-2-1; filed Nov 10, 1994, 11:00 a.m.: 18 IR 488; errata filed Nov 1, 1995, 8:30 a.m.: 19 IR 353; filed Oct 22, 1997, 8:45 a.m.: 21 IR 922; errata filed Feb 6, 1998, 10:30 a.m.: 21 IR 2128)*

SECTION 2. 68 IAC 2-2-9.5 IS ADDED TO READ AS FOLLOWS:

68 IAC 2-2-9.5 Records

Authority: IC 4-33-4-1; 4-33-4-2; 4-33-4-3
Affected: IC 4-33-4-6; IC 4-33

Sec. 9.5. (a) This rule applies to all supplier licensees and supplier's license applicants.

(b) All supplier licensees and supplier's license applicants shall maintain, in a place secure from theft, loss, or destruction, adequate records of business operations. These records shall be held for at least five (5) years. These records shall include, but not be limited to, the following:

(1) All correspondence with or reports to the commission or to any local, state, or federal government agency.

(2) All financial statements or financial records of the supplier.

(3) All records pertaining to products or services supplied by the supplier licensee to Indiana riverboat licensees or Indiana riverboat license applicants.

(4) All correspondence with riverboats licensed under IC 4-33, or documentation relating to order, shipment, or receipt or provision of merchandise or services sold or provided under the Act or this title.

(5) Personnel files on each employee of the supplier licensee, including sales representatives.

(c) All supplier licensees and supplier's license applicants must produce the original or a copy, or both, of any records requested by the commission, commission agents, or persons authorized by the commission.

(d) No original book, record, or document that is required to be maintained by this section may be destroyed without prior approval of the commission.

(e) If a supplier licensee or supplier's license applicant fails to comply with this section, the commission may initiate disciplinary action pursuant to 68 IAC 13-1. *(Indiana Gaming Commission; 68 IAC 2-2-9.5)*

SECTION 3. 68 IAC 2-3-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-3-5 Licensing procedures

Authority: IC 4-33-4-1; IC 4-33-4-2
Affected: IC 4-33-8-3

Sec. 5. (a) An applicant for an occupational license shall be subject to the following procedures prior to licensing:

(1) Application.

(2) Issuance of a temporary identification badge. The temporary identification badge shall serve as the temporary occupational license until the permanent occupational license has been issued or denied.

(3) Investigation of the applicant.

(4) If an applicant for an occupational license, Level 1, 2, or 3 has been convicted of a felony under Indiana law, the laws

of any other state, or the laws of the United States, the application is automatically denied in accordance with IC 4-33-8-3(2). The executive director shall issue the applicant a notice of denial by certified mail, or the commission agent who receives the completed application may personally deliver a notice of denial to the applicant.

(5) Action by the commission.

(6) Issuance of a permanent ~~occupational license and~~ identification badge. **The permanent identification badge shall serve as the permanent occupational license.**

(7) Different or additional licensing procedures the commission requires of the applicant to ensure the applicant is in compliance with the Act and this title.

(b) Procedures for a temporary occupational license shall be as follows:

(1) An applicant for an occupational license must submit a completed application that has been stamped and signed by the riverboat licensee, the riverboat license applicant, or its authorized agent to the commission agent at the commission's dock site office during times designated by the commission agents.

(2) Once the commission agent has received the completed occupational license application and appropriate fee, the commission agent shall obtain the applicant's fingerprints and photograph. If the application or a criminal record check completed by a commission agent, or both, does not reveal that the applicant has been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States, the commission agent shall issue the applicant a temporary identification badge.

(3) An applicant who receives a temporary identification badge may work on a riverboat until a permanent license is issued or the temporary identification badge is revoked.

(4) The temporary identification badge shall be a card of a color designated by the executive director and that meets the specifications set forth in section 6 of this rule. The color of the temporary identification badge shall be different from the color of the permanent identification badge.

(5) Temporary identification badges shall be worn by all occupational licensees during work hours. Temporary identification badges shall be clearly displayed.

(6) A fee of ten dollars ($10) shall be paid to the commission for any necessary replacement of temporary identification badge. The fee shall be assessed each time an occupational licensee obtains a replacement temporary identification badge.

(7) A temporary identification badge shall not be transferred. If the applicant resigns or his or her employment is terminated, the applicant shall return the temporary badge to the commission.

(8) Requirements for the revocation of a temporary identification badge shall include the following:

(A) The executive director, upon written notice to the applicant and the riverboat licensee, may revoke an applicant's temporary badge if the executive director determines that the background investigation reveals that an applicant is not suitable for licensure.

(B) The executive director, or the executive director's designee, upon written notice to the applicant and the riverboat licensee, may revoke an applicant's temporary occupational license if the executive director or the executive director's designee determines that the applicant has violated the Act or this title, or committed a criminal offense in the performance of the applicant's duties for the riverboat licensee.

(C) If an applicant's temporary identification badge is revoked, the applicant shall not be permitted to work for any riverboat gambling operation at duties that are to be performed on a riverboat.

(D) If an applicant's temporary identification badge is revoked, the application shall be forwarded to the commission for action unless the applicant withdraws the application prior to commission action.

(9) An applicant must comply with all requests for information, documents, or other materials relating to the applicant and his or her application during the investigation conducted by the commission.

(c) The applicant shall meet the following standards, qualifications, or criteria to be issued an occupational license of any level:

(1) The applicant must possess the qualifications set forth in IC 4-33-8-3.

(2) The applicant must demonstrate a level of skill, experience, or knowledge necessary to perform the job that the applicant will perform.

(3) An applicant whose knowledge, experience, and skill are derived solely from the completion of an occupational training school that is not in compliance with 68 IAC 2-5 shall not be considered to have the requisite skill, experience, or knowledge necessary to conduct gambling games. An applicant who has completed an occupational training school that is not in compliance with 68 IAC 2-5 may be hired if the riverboat licensee will provide the appropriate training.

(4) The applicant must not have been convicted of any offense involving violation of a gaming law in any jurisdiction.

(5) The applicant's name must not appear on the exclusion list of any jurisdiction.

(6) The applicant must never have had a gaming license suspended or revoked in any jurisdiction.

(7) An applicant who will serve alcoholic beverages must hold the appropriate permits from the alcoholic beverage commission.

(8) An applicant whose duties will be to operate or navigate the riverboat must hold the appropriate licenses or merchant marine documents, or both, from the United States Coast Guard.

(9) An applicant who will work on a riverboat that is docked on the waters of Lake Michigan must hold a valid merchant marine document from the United States Coast Guard.

(10) An applicant whose duties will be to operate or navigate the riverboat must not have violated any criminal statute involving drugs or alcohol, or both, in any jurisdiction.
(11) An applicant must not be currently abusing drugs or alcohol, or both.
(12) An applicant must be twenty-one (21) years of age.
(13) An applicant must be in substantial compliance with all state and federal tax laws.
(14) An applicant must be of good moral character and reputation.
(15) An applicant must meet any other standard that the commission deems necessary to ensure compliance with the Act and this title after publication of the standard.

(d) The commission may place restrictions or conditions on a temporary occupational license. The applicant must comply with these restrictions or conditions before the commission issues an occupational license. These restrictions or conditions may include, but are not limited to, the following:
(1) That the applicant demonstrates a level of skill, experience, or knowledge necessary to perform the job that the applicant will perform.
(2) That the applicant who will serve alcoholic beverages holds the appropriate permits from the alcoholic beverage commission.
(3) That the applicant who will operate or navigate the riverboat holds the appropriate license or merchant marine documents, or both, from the United States Coast Guard.
The occupational licensee must continue to meet all conditions or restrictions for licensure after the issuance of the permanent occupational license. If an occupational licensee fails to adhere to these conditions or restrictions or fails to maintain suitability for licensure, the commission may initiate a disciplinary action under 68 IAC 13.

(e) Action of the commission shall be as follows:
(1) After the background investigation has been completed, if the commission finds that the applicant is suitable to receive an occupational license, the commission shall direct the executive director to issue the applicant an occupational license ~~and a permanent identification badge~~ upon the payment of the applicant's occupational license fee. **The permanent identification badge shall serve to represent the permanent occupational license.** If the applicant's occupational license fee is not received by the commission within ten (10) business days after the date of the mailing of the notification of the applicant's suitability for licensing to the applicant and the riverboat licensee, the executive director shall revoke the applicant's temporary identification badge and notify the commission that the temporary identification badge has been revoked.
(2) If the commission determines that the applicant is not suitable to receive an occupational license, it shall direct the executive director to issue the applicant a notice of denial by personal delivery or certified mail, immediately revoke the temporary license, and notify the appropriate riverboat licensee of the revocation of the temporary license.

(f) Requirements for a ~~permanent occupational license and a~~ permanent identification badge shall be as follows:
(1) Upon a finding of suitability for licensure, the commission shall issue an occupational license ~~and~~ **in the form of** a permanent identification badge.
~~(2) The occupational license shall be on a form prescribed by the commission and shall contain the following information:~~
~~(A) The occupational licensee's first name, last name, and job title.~~
~~(B) The occupational license number assigned by the commission.~~
~~(C) The level of the occupational license.~~
~~(D) The signature of the executive director.~~
~~(E) The date the occupational license was issued and the date that the occupational license will expire.~~
~~(3) The riverboat licensee shall possess the occupational licenses of the occupational licensees it employs.~~
~~(4) If the occupational licensee voluntarily terminates employment with a riverboat licensee, the riverboat licensee shall return the occupational license to the occupational licensee. If the occupational licensee's employment is involuntarily terminated for misconduct that may reflect on the occupational licensee's suitability for licensure, or the occupational licensee retires without an intent to seek employment with a different riverboat licensee, the riverboat licensee shall return the occupational license to the commission.~~
~~(5)~~ **(2)** The ~~occupational license~~ **permanent identification badge** shall remain the property of the commission at all times. The occupational license may be revoked, suspended, canceled, or restricted by the commission in accordance with 68 IAC 13. The commission may refuse to renew the license when it is reviewed under section 8 of this rule.
~~(6)~~ **(3)** Neither the occupational license **number** nor the permanent identification badge shall be transferred to another person. If the occupational licensee resigns or the occupational licensee's employment is terminated, the occupational licensee shall return the permanent identification badge to the commission.
~~(7)~~ **(4)** The permanent identification badge shall be a card of a color designated by the executive director and that meets the specifications set forth in section 6 of this rule. The color of the permanent identification badge shall be different from the color of the temporary identification badge.
~~(8)~~ **(5)** The permanent identification badge shall be worn by all occupational licensees during work hours. Permanent identification badges shall be clearly displayed.
~~(9)~~ **(6)** A fee of ten dollars ($10) shall be paid to the commission for any necessary replacement of a permanent identification badge. ~~or the permanent occupational license.~~ The fee shall be assessed each time an occupational licensee obtains a replacement permanent identification badge. ~~or permanent occupational license.~~

(Indiana Gaming Commission; 68 IAC 2-3-5; filed Nov 10,

1994, 11:00 a.m.: 18 IR 497; filed Jan 30, 1998, 11:00 a.m.: 21 IR 2056; filed May 29, 1998, 5:12 p.m.: 21 IR 3704; errata filed Aug 12, 1998, 3:58 p.m.: 22 IR 125; filed Dec 29, 1998, 10:46 a.m.: 22 IR 1418; errata filed Jan 11, 1999: 3:54 p.m.: 22 IR 1525)

SECTION 4. 68 IAC 2-6-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 2-6-6 Electronic gaming device inventory requirements; conversion notification

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 6. (a) The riverboat licensee must maintain an inventory of electronic gaming devices and equipment. The inventory must include the following:

(1) The serial number assigned to the electronic gaming device by the manufacturer.

(2) The registration number issued by the commission.

(3) The type of game the electronic gaming device is designed and used for.

(4) The denomination of tokens accepted by each electronic gaming device.

(5) The location of electronic gaming devices equipped with bill validators and any bill validators that stand alone.

(6) The manufacturer of the electronic gaming device.

(7) The location of the electronic gaming device.

(b) This inventory report must be submitted, on a form prescribed by the commission, to the executive director on the anniversary date of the issuance of the riverboat owner's license.

(c) If a riverboat licensee converts an electronic gaming device, the riverboat licensee must take the following steps:

(1) Request permission for the conversion from the commission and supply the commission with the following information:

(A) The serial number of the electronic gaming device that is being converted.

(B) The commission registration number of the electronic gaming device that is being converted.

(C) The machine number of the electronic gaming device that is being converted.

(D) The model number of the electronic gaming device that is being converted.

(E) The type of electronic gaming device that is being converted and the new type of machine if the type of machine is changed.

(F) The location of the electronic gaming device on the riverboat.

(G) If the electronic gaming device is a stand alone progressive or is linked to a progressive controller, the old rate of progression and the new rate of progression must be submitted.

(H) The current and future denomination of the electronic gaming device if the denomination is to be converted.

(I) The current and future EPROM number that is installed or that is to be installed in the electronic gaming device. If a new EPROM is installed in an electronic gaming device, the EPROM must be one that is approved for use in Indiana.

(J) Regular fill amount.

(K) Initial fill amount.

(L) Probe level measured from the top of the hopper.

~~(J)~~ **(M)** Any other information deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.

This information must be submitted to the commission at least fourteen (14) days before the riverboat licensee plans to make the conversion. The request for conversion shall have a space for the commission to sign indicating approval of the conversion request and a space for the signature of the commission agent to indicate the conversion was completed.

(2) The commission must approve the request for conversions before a conversion may be made by the riverboat licensee.

(3) A commission agent must KOBETRON the EPROMS to ensure that the EPROMS being installed match those on the request for conversion.

(4) A commission agent must seal the EPROM with tape in accordance with section 19 of this rule.

(5) In the presence of a commission agent, a slot technician or the equivalent shall ensure that the payglass installed on the electronic gaming device accurately reflects the payouts for the EPROM that has been installed in the electronic gaming device. The payglass test may be performed by either running the payout table test or by ensuring the payglass matches the approved diagram set forth in the payglass manual maintained by the commission.

(6) The riverboat licensee shall ensure that a copy of the par sheet is placed in the electronic gaming device in accordance with section 5 of this rule.

(7) The riverboat licensee shall perform a coin test to ensure that the electronic gaming device is communicating with the central computer system. If the electronic gaming device is not communicating with the central computer system, the electronic gaming device must be disabled.

(8) The riverboat licensee must update the master list of electronic gaming devices after the conversion is complete. The riverboat licensee must provide the chief counsel for the commission and the sergeant of the Indiana state police department assigned to the riverboat with a copy of the updated master list within fourteen (14) days of the conversion.

(Indiana Gaming Commission; 68 IAC 2-6-6; filed Jan 17, 1996, 11:00 a.m.: 19 IR 1302; filed Aug 20, 1997, 7:11 a.m.: 21 IR 12)

SECTION 5. 68 IAC 3-3-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-6 Reporting contracts with minority and women's business enterprises

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10
Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-5

Sec. 6. (a) ~~On the anniversary date of the issuance of the~~

~~certificate of suitability, and annually each year thereafter,~~ **Annually on January 31, for expenditures made during the previous calendar year,** each riverboat licensee or riverboat license applicant shall file a report with the commission concerning performance of its continuing obligation to meet the goals required by IC 4-33-14-5. The commission shall provide a copy of each report filed to the department of administration, minority business development. This report shall contain the following information:

(1) The total number and value of all contracts or transactions awarded for goods and services.

(2) The total number and value of all contracts or transactions awarded to certified minority and women's business enterprises and a schedule of anticipated disbursements, by calendar quarter, for these contracts or transactions.

(3) The total number and value of all contracts awarded that contain a participation plan and a schedule of anticipated disbursements, by calendar quarter, for these participation plans.

(4) The total number and value of all subcontracts to be awarded to minority and women's business enterprises under contracts containing a participation plan and a schedule of anticipated disbursements, by calendar quarter, for these subcontracts.

(5) A schedule showing actual disbursements to minority and women's business enterprises during each quarter of the year and indicating any deviation from the anticipated disbursement schedule previously reported to the commission.

(6) A schedule showing actual disbursements to minority and women's business enterprises by contractors under the provisions of a participation plan during each quarter of the year and indicating any deviation from the anticipated disbursement schedule previously reported to the commission.

(7) The total number and value of contracts or transactions awarded to noncertified minority and women's business enterprises for which the riverboat licensee or riverboat license applicant wishes to claim credit toward attainment of its statutory goal and for each such noncertified minority and women's business enterprise a description of the scope and thoroughness of the investigation conducted to determine that the enterprise qualifies as a minority and women's business enterprise under this rule. Credit shall only be given for noncertified minority and women's business enterprises that have applied for certification as a minority or women's business enterprise under this rule.

(8) An identification of each contract or transaction awarded to a minority and women's business enterprise.

(9) An identification of each contract in which the contractor has not complied, or is not reasonably expected to comply, with the provisions of the participation plan.

(10) A comprehensive description of all efforts made by the riverboat licensee or riverboat license applicant to monitor and enforce the provisions of the participation plan.

(11) Such other information deemed necessary by the executive director to ensure compliance with the Act and this title.

(b) The executive director may require a riverboat licensee or riverboat license applicant to present a written or oral report to the commission concerning performance of its continuing obligation to achieve the goals required by IC 4-33-14-5 at any time. *(Indiana Gaming Commission; 68 IAC 3-3-6; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3036)*

SECTION 6. 68 IAC 10-2-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 10-2-1 General provisions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 1. (a) This rule applies to all riverboat licensees.

(b) Blackjack shall be conducted in conformance with this rule.

(c) Riverboat licensees may only offer the game of blackjack on a table and layout that are in compliance with 68 IAC 14.

(d) The following definitions apply throughout this rule:

(1) "Blackjack" means an ace and second card with a point value of ten (10) dealt as the initial two (2) cards to a player or the dealer. Blackjack may not include an ace and card with a point value of ten (10) dealt to a player who has split the first two (2) cards dealt to the player.

(2) "Burn" means the act of placing a card face downward in the discard rack if it is not to be utilized in play in accordance with this rule.

(3) "Deal" means the distribution of the playing cards among the players and the dealer.

(4) "Dealer" means the occupational licensee of the riverboat licensee who is responsible for dealing the cards at the blackjack table.

(5) "Doubling down" means to make an additional wager, identical to or less than the player's original wager, on the first two (2) cards dealt to the player or the first two (2) cards of any split pair.

(6) "Even money wager" means a bet placed by a player when the player has a blackjack and the exposed card dealt to the dealer is an ace. ~~The even money wager wins if the dealer's hole card is a king, queen, jack, or ten (10). The even money wager loses if the dealer's hole card is an ace or a two (2) through nine (9).~~ **A player who makes an even money wager shall be paid at odds of at least one (1) to one (1).**

(7) "Exposed card" means the card held by a dealer that is seen by the other players.

(8) "Hard total" means the total point count of a hand that contains no aces or that contains aces that are counted as a value of one (1).

(9) "Hole card" means a card held by the dealer or player that is unseen by the other players or the dealer unless otherwise authorized by this rule.

(10) "Insurance wager" means a bet placed by a player when the exposed card dealt to the dealer is an ace. The insurance

wager wins if the dealer's hole card is a king, queen, jack, or ten (10). An insurance wager loses if the dealer's hole card is an ace or a two (2) through nine (9).

(11) "Peek machine" means a device that allows the dealer to see the hole card to determine if the dealer has a blackjack.

(12) "Soft total" means the total point count of a hand that contains an ace that is counted as a value of eleven (11).

(13) "Splitting pairs" means a wager in which the first two (2) cards a player receives are identical in value. The player must make a wager on the second hand in an amount equal to the player's original wager.

(14) "Surrender" means an option whereby the player surrenders the player's hand by forfeiting one-half (½) of the player's original wager if the dealer does not have a blackjack.

(Indiana Gaming Commission; 68 IAC 10-2-1; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2257; errata filed Jun 20, 1996, 1:15 p.m.: 19 IR 3114)

SECTION 7. 68 IAC 11-2-7 IS AMENDED TO READ AS FOLLOWS:

68 IAC 11-2-7 Meter readings
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 7. (a) The riverboat licensee's audit department or accounting department shall read the following meters of each electronic gaming device at least one (1) time per month:

(1) Tokens-in meter.

(2) Tokens-out meter.

(3) Tokens drop meter.

(4) Bill drop meter.

(b) A log shall be maintained by the audit department or accounting department to record the meter readings. A copy of this report shall be submitted to the commission office in Indianapolis, Indiana, after the ~~weekly~~ **monthly** readings have been completed. *(Indiana Gaming Commission; 68 IAC 11-2-7; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2268)*

SECTION 8. 68 IAC 11-5-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 11-5-1 General provisions
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 1. (a) This rule applies to all riverboat licensees.

(b) Riverboat licensees shall submit the procedures that the riverboat licensee shall implement to ensure that all tokens and chips are accurately and regularly counted to prevent the loss of assets.

(c) All racked tokens and primary chip inventories must be rotated and counted, at a minimum, on a daily basis. ~~All secondary chip inventories must be rotated and counted, at a minimum, at least one (1) time per week.~~ **Secondary sets of chips and tokens shall be rotated and counted in accordance with 68 IAC 15-4-3.**

(d) The riverboat licensee shall submit a list of the titles of employees authorized to participate in the chip and token rotation and count. These employees must hold an occupational license, Level 2 or higher. Amendments to the list of employees authorized to participate in the chip and token rotation and count must be submitted to the commission agent as the amendment occurs. The employee title must be submitted to the commission agent before an employee with the title participates in the chip and token rotation and count.

(e) The riverboat licensee shall maintain the following information concerning chip and token rotations on a form approved by the commission:

(1) The date and time that the chip or token rotation was performed.

(2) The printed name of the occupational licensee who performed the chip or token rotation.

(3) The signature of the occupational licensee who performed the chip or token rotation.

(4) The occupational license number of the occupational licensee who performed the chip or token rotation.

(5) Any discrepancies that were discovered as a result of the chip or token inventory.

(6) The steps that were taken to investigate any discrepancies discovered as a result of the chip or token inventory.

(7) The results of the investigation that was conducted concerning any discrepancies discovered as a result of the chip or token inventory.

(Indiana Gaming Commission; 68 IAC 11-5-1; filed Jan 30, 1998, 11:00 a.m.: 21 IR 2061; filed Dec 29, 1998, 10:27 a.m.: 22 IR 1420)

SECTION 9. 68 IAC 14-2-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 14-2-2 Live gaming device table requirements
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. (a) Each live gaming device shall have, at a minimum, the following requirements:

(1) Each live gaming device shall be capable of having a drop box attached to it that meets the following requirements:

(A) One (1) lock that secures the contents of the drop box.

(B) A separate lock that attaches the drop box to the live gaming device. The keys to the lock securing the contents of the drop box and attaching the drop box to the live gaming device must be separate.

(C) A slot opening through which currency, coins, tokens, chips, forms, records, and documents can be inserted into the drop box.

(D) Be equipped with a mechanical device that automati-

cally closes and locks the slot opening upon removal of the drop box from the live gaming device.

(E) Is attached to the side of the live gaming device table at which the dealer is located, or at another location approved by the executive director.

(F) Have the type of game, the shift, and the live gaming device table number to which the drop box is attached permanently imprinted on the drop box. The imprinted information must be clearly visible.

(2) Each live gaming device shall be capable of having a tip box attached to it for the deposit of tips and gratuities received by the dealer. The tip box shall meet the following requirements:

(A) It shall be a transparent container.

(B) It shall be capable of being locked.

(C) It shall be capable of being secured to the table by means of a chain, a lock, or the equivalent. If the tip box is attached by means of a lock, the key to remove the tip box from the table shall be separate from the key that opens the tip box.

(D) It shall be attached to the side of the live gaming device table at which the dealer is located, or at another location approved by the executive director.

(3) Each live gaming device that utilizes a table layout shall have the name of the riverboat licensee imprinted on the layout.

(b) The riverboat licensee may have emergency drop boxes to replace the drop boxes on a temporary basis. The emergency drop boxes must meet the requirements outlined in subsection (a)(1)(A) through (a)(1)(E) and must have the word "EMERGENCY" permanently and clearly imprinted thereon. *(Indiana Gaming Commission; 68 IAC 14-2-2; filed Jul 18, 1996, 9:05 a.m.: 19 IR 3294)*

SECTION 10. 68 IAC 14-3-8 IS ADDED TO READ AS FOLLOWS:

68 IAC 14-3-8 Card and dice removal and cancellation logs

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 8. (a) Each riverboat licensee must maintain a log in the pit area containing information about card and dice removal and transfer to the card and dice cancellation room. Such log shall track the following information:

(1) The date.

(2) The number of decks of cards removed from play.

(3) The number of individual dice removed from play.

(4) Game from which the cards or dice were removed.

(5) Printed name, signature, and license number of the pit manager responsible for removal.

(b) Each riverboat licensee must maintain a log in the card and dice cancellation room to track information about card and dice removal and cancellation. The following information shall be contained in that log:

(1) Date received in cancellation room.

(2) Number of decks of cards received.

(3) Number of individual dice received.

(4) Printed name, signature and occupational license number of occupational licensee accepting receipt of cards or dice.

(5) Date of destruction.

(6) Number of decks of cards destroyed.

(7) Number of individual dice destroyed.

(8) Printed name, signature and occupational license number of the individual responsible for destruction.

(9) Inventory of uncanceled cards and uncanceled dice in the cancellation room.

(Indiana Gaming Commission; 68 IAC 14-3-8)

SECTION 11. 68 IAC 14-10-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 14-10-2 Caribbean Stud Poker table requirements

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. (a) The table must meet the requirements set forth in 68 IAC 14-2.

(b) The Caribbean Stud Poker table shall be covered with a cloth that meets the following requirements:

(1) The patented name of Caribbean Stud Poker shall be imprinted on the cloth.

(2) One (1) side of the cloth shall be designated for players and the opposite side designated for the dealer.

(3) The cloth shall have at least seven (7) areas designated for the placement of wagers on bets approved in accordance with 68 IAC 10-6.

(4) The table shall have at least seven (7) token-in slots for participation in the progressive jackpot corresponding with the placement of the table wagers.

(5) An inscription reading "Dealer only plays with Ace/King or higher" shall appear on the cloth.

(6) The rules concerning the operation of the game, including minimum and maximum wagers, payoffs, and the winning hands that qualify for a portion of the progressive jackpot, shall be posted at the table for public inspection.

(7) The name of the riverboat licensee shall be imprinted on the cloth.

(c) The Caribbean Stud Poker table shall have a meter to display the current amount in the progressive jackpot.

(d) The Caribbean Stud Poker table shall have lights or some other mechanism that will signify which players, if any, inserted the appropriate token to participate in the progressive game.

(e) Any other requirements deemed necessary by the executive director or the commission to ensure:

(1) compliance with the Act and this title; and
(2) the integrity of the games.
(Indiana Gaming Commission; 68 IAC 14-10-2; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3042)

SECTION 12. 68 IAC 14-11-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 14-11-2 Table requirements
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. (a) The table must meet the requirements set forth in 68 IAC 14-2.

(b) The Let It Ride table shall be covered with a cloth that meets the following requirements:
(1) The patented name of Let It Ride shall be imprinted on the cloth.
(2) One (1) side of the cloth shall be designated for players and the opposite side designated for the dealer.
(3) The cloth shall have no more than eight (8) areas designated for the placement of the three (3) wagers a player must initially place in accordance with 68 IAC 10-7.
(4) If the Let It Ride bonus feature is offered at the Let It Ride table, there must be no more than eight (8) sensors that correspond with the placement of table wagers. The sensors are for the side bet to be placed on and for participation in the bonus feature.
(5) A designated area located in front of the dealer for the placement of the community cards.
(6) The rules concerning the operation of the game, including minimum and maximum wagers, payoffs or payoff odds, and the winning hands that qualify for the bonus payment, shall be posted at the table for public inspection.
(7) The name of the riverboat licensee shall be imprinted on the cloth.

(c) The Let It Ride table that offers the bonus feature must have sensor lights that are visible to the following:
(1) The players.
(2) The dealer.
(3) The surveillance system and surveillance personnel.
The sensor lights must signify which players, if any, placed the one dollar ($1) token to participate in the bonus feature.

(d) Any other requirements deemed necessary by the executive director or the commission to ensure:
(1) compliance with the Act and this title; and
(2) the integrity of the games.
(Indiana Gaming Commission; 68 IAC 14-11-2; filed Jun 1, 1998, 2:53 p.m.: 21 IR 3710)

SECTION 13. 68 IAC 14-12-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 14-12-2 Table requirements
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. (a) The Caribbean Draw Poker table must meet the requirements set forth in 68 IAC 14-2.

(b) The Caribbean Draw Poker table shall be covered with a cloth that meets the following requirements:
(1) The patented name of Caribbean Draw Poker shall be imprinted on the cloth.
(2) One (1) side of the cloth shall be designated for players and the opposite side designated for the dealer.
(3) The cloth shall have no more than eight (8) designated areas for the placement of a wager by a player in accordance with 68 IAC 10-8.
(4) The table shall have no more than eight (8) token-in slots for participation in the progressive jackpot corresponding with the placement of the table wagers.
(5) An inscription reading "Dealer only plays with pair of eights or higher" shall appear on the cloth.
(6) The rules concerning the operation of the game, including minimum and maximum wagers, payoffs or payoff odds, and the winning hands that qualify for the portion of the progressive jackpot, shall be posted at the table for public inspection.
(7) The name of the riverboat licensee shall be imprinted on the cloth.

(c) The Caribbean Draw Poker table shall have a meter to display the current amount in the progressive jackpot.

(d) The Caribbean Draw Poker table that offers the progressive feature must have sensor lights that are visible to the following:
(1) The players.
(2) The dealer.
(3) The surveillance system and surveillance personnel.
The sensor lights must signify which players, if any, inserted the appropriate token to participate in the progressive portion of the game.

(e) Any other requirements deemed necessary by the executive director or the commission to ensure:
(1) compliance with the Act and this title; and
(2) the integrity of the games.
(Indiana Gaming Commission; 68 IAC 14-12-2; filed Jun 1, 1998, 3:40 p.m.: 21 IR 3710; errata filed Aug 12, 1998, 3:59 p.m.: 22 IR 125)

SECTION 14. 68 IAC 15-2-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-2-3 Multiple transaction control log
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 3. (a) The riverboat licensee shall be required to maintain a log for the purpose of recording aggregated cash transactions in excess of three thousand dollars ($3,000). The riverboat licensee shall require coordination between the pits, slots, cashiers, cages, redemption centers, and other appropriate areas to ensure all transactions in excess of three thousand dollars ($3,000) are recorded.

(b) The employee witnessing the transaction is responsible for completing the log.

(c) The log shall include, but is not limited to, the following information:

(1) Date of the transaction.

(2) Time of the transaction.

(3) Description of the patron and name of the patron, if known.

(4) Type of transaction and related information, including, but not limited to, the following types of transaction:

(A) Marker payment.

(B) Deposit.

(C) Check.

(D) Chip redemption.

(5) Amount of the transaction.

~~(6) Number and denomination of bills involved in the transaction.~~

~~(7)~~ **(6)** Signature and occupational licensee number of the individual recording the transaction.

~~(8)~~ **(7)** Location of transaction.

~~(9)~~ **(8)** Photograph of the patron.

~~(10)~~ **(9)** Any other information deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.

(d) The reports shall be submitted to the accounting department on a daily basis and maintained by the riverboat licensee for five (5) years.

(e) Cage and pit personnel are responsible for communicating with other personnel to ensure all transactions are properly logged and any necessary currency transaction reports are completed. (*Indiana Gaming Commission; 68 IAC 15-2-3; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3327)*

SECTION 15. 68 IAC 15-2-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-2-6 Currency transaction report

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 6. The following information shall, at a minimum, be included on the currency transaction report:

(1) Part I. **Section A.** The individual or organization for whom the transaction was completed, including the following information:

(A) Patron's last name, first name, and, if provided, middle initial.

(B) Patron's Social Security number.

(C) Name of organization and employer identification number if the transaction is being conducted on behalf of a business or organization.

(D) If the individual is an alien or nonresident of the United States, the passport number or alien registration number, or both, and issuing country for both.

(E) Complete address of the patron, including the number and street, city, state, zip code and country if not in the United States.

(F) ~~Business or occupation of the individual or organization conducting the transaction.~~ **Individual's date of birth.**

(G) Type and number of identification used to verify patron's identity.

(H) Customer's account number. Include the customer's account number if an account relationship has been established between the patron and the casino or the deposit receipt number.

(2) Part ~~II.~~ **I. Section B.** Identity of individual conducting the transaction (complete only if an agent conducts a transaction for the person). Include the following information:

(A) Agent's last name, first name, and, if provided, middle initial.

(B) Agent's Social Security number.

(C) Complete address of the agent, including the number and street, city, state, zip code, and country, if not in the United States.

(D) If the individual is an alien or nonresident of the United States, the passport number, alien registration number, or both, and the issuing country for both.

(E) Agent's date of birth.

~~(E)~~ **(F)** Type and number of identification used to verify patron's identity.

~~(3) Part III. Patron's account or receipt number. Include the patron's account number if an account relationship has been established between the patron and the casino or the deposit receipt number.~~

~~(4)~~ **(3)** Part ~~IV.~~ **II.** Description of transaction, including the following:

(A) Indicate ~~if more space is necessary to explain the transaction and a separate schedule has been attached.~~ **whether multiple currency transactions, none of which individually exceeds ten thousand dollars ($10,000), comprise this report.**

(B) Indicate the nature of the transaction. Indicate if more than one (1) type of transaction is involved, and indicate the amount for each: ~~Only transactions in one (1) of the same categories, including:~~

(i) currency exchange;

(ii) cash in; or

(iii) cash out.

~~should be included on a single currency transaction report.~~

(C) Specify the total amount of the cash transaction, in United States dollars, being reported. This must be completed for reports even if a check is being cashed.

~~(D) Specify the amount of the cash transaction that was in one hundred dollar ($100) bills or higher denomination.~~

~~(E)~~ **(D)** Include the date of the transaction.

~~(F)~~ **(E)** If the transaction involves currency other than United States currency, include the ~~following information:~~ **name of the country that issued the currency.**

~~(i) Currency name.~~

~~(ii) The country that issued the currency.~~

~~(iii) Total amount of the foreign currency in United States dollars.~~

~~(G) If the transaction involves a check, include the following information:~~

~~(i) Date of the check.~~

~~(ii) Amount of the check in United States dollars.~~

~~(iii) Payee of the check.~~

~~(iv) Maker of the check.~~

~~(v) Drawee bank and city.~~

~~(5)~~ **(4)** Part ~~V.~~ **III.** The riverboat reporting the financial transaction shall include the following information:

(A) ~~Signature and commission license number~~ **Name** of the riverboat cage or occupational licensee handling ~~or supervising and witnessing~~ the transaction **or preparing the form.**

~~(B) Position held by the occupational licensee handling or supervising and witnessing the transaction.~~

~~(C) Date the report was completed by the occupational licensee.~~

~~(D)~~ **(B) Name and** signature ~~and occupational licensee number~~ of the occupational licensee reviewing and approving the currency transaction report. The occupational licensee responsible for reviewing, approving, and submitting the report shall sign the report.

~~(E) Title of the occupational licensee reviewing the report.~~

(C) Name and commercial telephone number of a responsible individual to contact concerning any questions about this form.

~~(F)~~ **(D)** Date on which the occupational licensee reviewed and approved the report.

~~(G)~~ **(E)** All currency transaction reports must be properly filed with the Internal Revenue Service by the fifteenth day after the date the transaction was completed with a copy simultaneously provided to the commission agent.

(Indiana Gaming Commission; 68 IAC 15-2-6; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3329)

SECTION 16. 68 IAC 15-4-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-4-2 Purchase and receipt of chips and tokens

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. (a) The riverboat licensee or riverboat license applicant shall be responsible for establishing policies and procedures for the purchase, receipt, inventory, storage, and destruction of chips and tokens. These policies and procedures must be submitted to and approved by the executive director in accordance with 68 IAC 15-1.

(b) Procedures for the purchase and receipt of chips and tokens shall include, but are not limited to, the following:

(1) Chips and tokens shall only be purchased from a licensed supplier. **The riverboat licensee or riverboat license applicant shall be responsible for communicating with licensed suppliers to arrange secured shipment and receipt of chips or tokens. Shipment shall be made via an exclusive courier who shall be required to use sealed doors and implement procedures for documenting all stops along the route.**

(2) The occupational licensee delegated the responsibility of ordering chips and tokens shall be at least the slot manager or cage manager level, or the equivalent.

(3) The commission shall be notified in writing prior to the delivery of any chips or tokens. This notification shall include the following information:

(A) Date and time of delivery.

(B) Location of delivery.

(C) A detailed description of the method and details of the secured shipment that will be utilized to transport the chips or tokens.

~~(C)~~ **(D)** Amount of chips or tokens, by denomination.

~~(D)~~ **(E)** Occupational licensee who authorized the order of the chips or tokens.

~~(E)~~ **(F)** Any other information deemed necessary by the executive director or commission to ensure compliance with the Act and this title.

(4) At least two (2) occupational licensees from separate departments shall open and count the chips or tokens received. A commission agent shall also be present **while the chips or tokens are being opened and counted.**

(5) Any deviation between the actual count of chips or tokens received and the invoice or packing slip accompanying the chips or tokens or any defects in the chips or tokens shall be immediately reported to the executive director.

(6) The actual count of chips or tokens shall be recorded in a log or ledger. This log or ledger will be in a format approved by the commission. The following information shall, at a minimum, be included in the log or ledger:

(A) Date of receipt of the chips or tokens.

(B) Amount of chips or tokens, by denomination.

(C) Whether the chips are value chips or nonvalue chips.

(D) Whether the chips are part of the primary or reserve set of chips.

(E) Total token and chip inventory.

(F) Signatures of the occupational licensees counting the chips or tokens received.

(G) Name of the commission agent observing the delivery of the chips or tokens.

(H) Signature of the occupational licensee recording the entry.

(I) Any other information deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.

(7) If any of the chips are to be held in reserve, then those chips shall be stored in a locked cabinet separate from all other chips.

(Indiana Gaming Commission; 68 IAC 15-4-2; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3330)

SECTION 17. 68 IAC 15-4-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-4-3 Storage of chips or tokens

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected; IC 4-33

Sec. 3. The riverboat licensee or riverboat applicant shall establish procedures for the transfer or storage of all chips and tokens. The procedures shall include, at a minimum, the following:

(1) Location and access of sensitive keys in accordance with 68 IAC 11-7.

(2) At least two (2) occupational licensees must be present for the transfer of the reserve or secondary chips and reserve tokens.

(3) Identification of occupational licensees authorized to transfer reserve and secondary chips.

(4) Establish a procedure where at least two (2) occupational licensees, Level 2 or higher, from separate departments shall open and check the chips transferred. Identify the occupational licensees, by title, involved in this process.

(5) Inventories of chips in reserve and secondary set of chips and reserve tokens shall be made on a monthly basis and the results of such inventories shall be recorded in the chip inventory ledger. Physical inventories may be performed annually if the inventory procedures incorporate the sealing of locked compartments. The procedures for **the performance of chip inventories, the procedures for** sealing and accessing ~~these~~ locked compartments, and the security measures to be taken with respect to these locked compartments **shall be submitted to the commission for approval at least sixty (60) days prior to their implementation.**

(6) During nongaming hours all chips shall be stored and locked in the casino cages, main bank vault, or locked table trays at the live gaming devices.

(Indiana Gaming Commission; 68 IAC 15-4-3; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3331)

SECTION 18. 68 IAC 15-7-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-7-3 Electronic gaming devices

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 3. (a) The riverboat licensee shall require, on a daily basis, that the revenue auditor or its equivalent to perform certain procedures on the calculation of the electronic gaming device win. These procedures shall include, at a minimum, the following procedures:

(1) Trace the total of the "bills-in" meter readings as recorded by the bill acceptor flash report or equivalent to the actual count performed by the soft count team to verify agreement.

(2) Compare the total of tokens dropped as reported by the central computer system with the actual wrap count as reported by the slot drop count team. Any significant variance of greater than two percent (2%) ~~or five hundred dollars ($500), whichever is less,~~ will be documented and investigated by the head of the accounting department or the equivalent.

(3) Review all voided electronic gaming device jackpot and fill slips for accuracy and proper handling. Verify proper number of authorized signatures.

(4) Trace the electronic gaming device count documentation into the cage checkout sheet and subsequent posting to the general ledger.

(5) Verify that all manual electronic gaming device jackpot and fill slips are entered into the central computer system.

(b) The riverboat licensee shall require that all variances or discrepancies from subsection (a) shall be investigated, recorded, and reported to the head of the accounting department or its equivalent and the commission staff.

(c) Any variances or discrepancies that affect the calculation of the electronic gaming device win shall be adjusted for in the financial statements and reported on Form RG-1 for the appropriate gaming day.

(d) The riverboat licensee shall require the revenue auditor or its equivalent to perform certain procedures, on a sample basis, on the electronic gaming devices on a daily basis. These procedures should be performed for both computerized and manual forms and shall include, at a minimum, the following:

(1) Compare the original electronic gaming device fills and jackpot slips to the duplicate fills and jackpot slips to verify accuracy.

(2) Review the electronic gaming device fills and jackpot slips for the proper number of authorized signatures.

(3) Verify and account for the numerical sequence of the electronic gaming device fills and jackpot slips.

(4) Recalculate the electronic gaming device documentation for accuracy and recording.

(5) Randomly select certain days to verify the accuracy of the total of fills and jackpots and re-foot and trace to the jackpot and fill report.

(e) The riverboat licensee shall require that all variances or discrepancies of greater than two percent (2%) ~~or five hundred dollars ($500), whichever is less,~~ from subsection (a) or (d) shall be investigated, recorded, and reported to the head of the accounting department or equivalent.

(f) Any variances or discrepancies that affect the calculation of the electronic gaming device win shall be adjusted for in the financial statements and reported on Form RG-1 for the appropriate gaming day.

(g) The riverboat licensee's audit department or accounting department shall read the following electro-mechanical meters of each electronic gaming device at least one (1) time per month:
(1) Tokens-in meter.
(2) Tokens-out meter.
(3) Tokens drop meter.
(4) Bill drop meter.

(h) A log shall be maintained by the audit department or accounting department to ~~read~~ **record** the meter readings. A copy of this report shall be submitted to the commission office in Indianapolis, Indiana after the monthly readings have been completed.

(i) The meter readings shall be compared to the readings produced by the central computer system. Any variance of greater than two percent (2%) ~~or five hundred dollars ($500), whichever is less,~~ will be investigated by the head of the accounting department or equivalent and reported. *(Indiana Gaming Commission; 68 IAC 15-7-3; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3332)*

SECTION 19. 68 IAC 15-8-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-8-1 Applicability; general provisions
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 1. (a) This rule applies to riverboat licensees.

(b) The riverboat licensee shall establish policies and procedures in connection with the internal audit function for the riverboat operations. The internal audit department or its equivalent shall report directly to the audit committee of the board of directors, or equivalent. **The internal audit department shall consist of at least two (2) full-time on-site internal auditors.**

(c) The riverboat licensee shall document all procedures and results of compliance testing performed under this rule. All material instances of noncompliance with the submitted internal controls shall be investigated and reported immediately to the commission staff.

(d) Quarterly reports shall be submitted to the commission staff documenting the results of the compliance testing under this rule. The quarterly reports documenting the results of the compliance testing shall be submitted to the regional audit administrator at the commission office in Indianapolis, Indiana, within thirty (30) days of the close of the quarter that the report covers. **These reports shall identify repeat findings and shall list all corrective action that was taken or will be taken to avoid similar problems in the future.**

(e) At any time errors are uncovered in the computation of win, such errors shall be corrected and reported on Form RG-1 for the appropriate gaming day.

(f) As used in this rule, "Form RG-1" means the Daily Adjusted Gross Receipts and Tax Remittance Form. *(Indiana Gaming Commission; 68 IAC 15-8-1; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3333; filed Aug 20, 1997, 7:11 a.m.: 21 IR 20)*

SECTION 20. 68 IAC 15-8-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 15-8-2 Observation of live table games
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. The riverboat licensee shall establish procedures to observe, unannounced, the compliance with the system of internal controls that have been submitted in accordance with 68 IAC 11 and 68 IAC 15 for live gaming devices. The procedures shall be performed quarterly and shall include, at a minimum, the following:
(1) Observe and review the opening, closing, and shift procedures.
(2) Observe and review the live gaming device fill and credit procedures.
(3) Observe and review the live gaming device pit marker procedures.
(4) Observe and review the live gaming device drop box and tip box removal procedures.
(5) Observe and review the soft count procedures, including the count of the live gaming device drop boxes and currency acceptor cash storage boxes, and the subsequent transfer of the funds.
(6) Observe and review the location and control over sensitive keys.
(7) Observe and review card and dice control procedures, **including the card and dice removal and cancellation logs**.
(8) Any other procedures deemed necessary by the executive director or the commission to ensure compliance with the Act and this title.
(Indiana Gaming Commission; 68 IAC 15-8-2; filed Jul 18, 1996, 8:45 a.m.: 19 IR 3333)

SECTION 21. 68 IAC 15-14 IS ADDED TO READ AS FOLLOWS:

Rule 14. Financial Statement Audits

68 IAC 15-14-1 Applicability; general provisions
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 1. (a) Annually, each riverboat licensee shall undergo an audit of the annual financial statements of the riverboat licensee.

(b) The riverboat licensee shall recommend an independent certified public accountant to perform the audit. The independent certified public accountant or independent certified public accounting firm must be licensed in Indiana. The executive director or the executive director's designee must approve of the selection of the independent certified public accountant prior to the commencement of a contract between the accountant and the riverboat licensee.

(c) The audit shall be performed in accordance with generally accepted accounting principles and contain the opinion of the independent certified public accountant as to its fair presentation in accordance with such generally accepted accounting principles.

(d) Audits required by this section shall be prepared at the expense of the riverboat licensee. *(Indiana Gaming Commission; 68 IAC 15-14-1)*

68 IAC 15-14-2 Qualifications
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 2. An independent certified public accountant or independent certified public accounting firm selected to perform a financial statement audit shall meet the following qualifications and shall be required to affirm that they meet these qualifications as part of a written agreement with the riverboat licensee to perform the audit:

(1) Be independent with respect to the entity, its parents, and investors. Standards of independence are to be determined by pronouncements of the American Institute of Certified Public Accountants and the Securities and Exchange Commission.
(2) Licensed to practice in Indiana.
(3) Have sufficient experience in the gaming industry and/or related industries.
(4) Have an adequate number of professional personnel to meet the requirements of the engagement in a timely and efficient manner.

(Indiana Gaming Commission; 68 IAC 15-14-2)

68 IAC 15-14-3 Conditions of engagements
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 3. An independent certified public accountant or independent certified public accounting firm selected to perform a financial statement audit shall agree to abide by the following conditions of engagement, which shall be stated in a written agreement with the riverboat licensee to perform the audit:

(1) Inform the commission with respect to material errors and irregularities, or illegal acts that come to their attention during the course of the audit.
(2) Inform the commission in writing of matters that come to their attention that represent significant deficiencies in the design or operation of the internal control structure.
(3) Provide each member of the professional training staff assigned to the engagement a minimum of sixteen (16) hours of training in the gaming industry.
(4) Retain and make available to the commission personnel or their authorized representatives all reports, working papers (current and permanent files), audit programs, tax returns, and other information relating to engagements for a period of five (5) years after completion of the engagement.
(5) Respond timely to all reasonable requests of successor auditors.
(6) Submit peer review reports to the commission.
(7) Have all engagement letters approved by the commission prior to undertaking assignments.
(8) Send copies of all reports and management letters directly to the commission in compliance with this rule.
(9) At the conclusion of the engagement, provide management and the commission, in a mutually agreeable format, recommendations designed to help the entity make improvements in its internal control structure and operation, and other matters that are discovered during the audit.

(Indiana Gaming Commission; 68 IAC 15-14-3)

68 IAC 15-14-4 Special audits
Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33

Sec. 4. To assure the integrity of gaming, compliance with the Act and the rules of the commission, the commission may require, at any time, a special audit of a riverboat owner to be conducted by an independent certified public accountant who is, or whose firm is, licensed in Indiana. The commission shall establish the scope, procedures, and reporting requirements of such an audit. *(Indiana Gaming Commission; 68 IAC 15-14-4)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 26, 2001 at 10:00 a.m., at the Indiana Gaming Commission, National City Center, 115 West Washington Street, South Tower, Suite 950, Conference Room, Indianapolis, Indiana the Indiana Gaming Commission will hold a public hearing on proposed new and amended rules to: delete the requirement that a supplier of alcoholic beverages is required to hold a supplier's license; to require supplier licensees and supplier license applicants to maintain records and allow the Indiana Gaming Commission access to those records; to clarify who

should retain possession of occupational licenses and badges at the various phases of licensure; to require a riverboat licensee requesting permission to convert an electronic gaming device to inform the commission of the regular fill amount, initial fill amount, and probe level measured from the top of the hopper; to change the date by which the riverboat licensees and license applicants must submit reports concerning the performance of their continuing obligation to meet the minority and women owned business goals established in IC 4-33-14-5 such that riverboat licensees and license applicants will be required to file reports reflecting expenditures made during the previous year by January 31 of the following year; correct an error in the rules for blackjack; to clarify meter reading reports need only be submitted to the Commission on a monthly basis; to correct a conflict in the rules and clarify that secondary chip inventories need only be rotated and counted on a monthly basis; to require that all table layouts have the name of the riverboat licensee imprinted on the layout; to require riverboat licensees to keep logs in association with card and dice removal and cancellation and to specify the requirements of those logs; to revise the information required to be included on Currency Transaction Reports so it will agree with the revised Internal Revenue Service Currency Transaction Report form; to specify the manner in which suppliers and riverboats must ship chips and tokens; to require commission approval of procedures for performing chip inventories and sealing and accessing of locked compartments used for the storage of chips or tokens; to eliminate the need for riverboat licensees to investigate variances of $500 or more in electronic gaming device win and to correct an error of word choice in that rule; to require the internal audit department to include at least two on-site internal auditors and to stipulate that quarterly reports of compliance testing shall identify repeat findings and state corrective action; and to stipulate the qualifications and conditions that must be included in all engagement arrangements a riverboat makes with independent accounting agencies to perform financial statement audits and to specify requirements for notice to the commission about such audits and their progress.

If an accommodation is required to allow an individual with a disability to participate, please contact Jennifer L. Chelf at (317) 233-0046 at least 48 hours prior to the meeting.

Copies of these rules are now on file at the Indiana Gaming Commission, National City Center, 115 West Washington Street, South Tower, Suite 950; Indiana State Archives, Indiana State Library, 140 North Senate Avenue; and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

John J. Thar
Executive Director
Indiana Gaming Commission

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #99-265

DIGEST

Amends 326 IAC 6-3 concerning process weight rates. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: January 1, 2000, Indiana Register (23 IR 926).

Second Notice of Comment Period: February 1, 2001, Indiana Register (24 IR 1472).

Date of First Hearing: April 12, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

Portions of this proposed rule are substantively different from the draft rule published on February 1, 2001, at 24 IR 1475. The Indiana Department of Environmental Management (IDEM) is requesting comment on the following portions of the preliminarily adopted rule that are substantively different from the language contained in the draft rule.

326 IAC 6-3-1(b)

326 IAC 6-3-2(d)

The following provisions were added to the draft presented to the board for preliminary adoption and address comments received in response to the second notice of comment period:

(1) Added to the list of processes and their attendant emissions that are exempt from 326 IAC 6-3-1(b) in the draft rule.

(2) Specified that at any time that the coating rate increases to greater than ten (10) gallons per day, particulate matter control devices must be in place and that once an operation becomes subject to this requirement it remains subject to it even if there is a subsequent decrease in gallons of coating used in 326 IAC 6-3-2(d) of the draft rule.

This notice requests the submission of comments on the sections of the rule listed above, including suggestions for specific amendments to those sections. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Comments on additional sections of the proposed rule that the commentor believes are substantively different from the draft rule may also be submitted for the consideration of the department. Mailed comments should be addressed to:

#99-265 Process weight rates
Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments in any form must be postmarked, hand delivered, or faxed by June 21, 2001.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from February 1, 2001, through March 5, 2001, on IDEM's draft rule language. IDEM received comments from the following parties by the comment period deadline:

American Electric Power, (AEP)
Bethlehem Steel Corporation, (BSC)
Charleston Corporation, (Charleston)
City of Indianapolis, Environmental Resources Management Division, (City/ERMD)
Countrymark Cooperative, Inc., (CCI)
Eli Lilly and Company, (ELC)
Essroc Cement Corporation, (ECC)
GE Plastics Mt Vernon, Inc., (GE)
General Cable Corporation, (GCC)
Glaval Corporation, (Glaval)
Hoosier Energy Rural Electric Cooperative, Inc.(HEREC)
Indiana Cast Metals Association, (INCMA)
Indiana Manufacturers Association, (IMA)
Indianapolis Power & Light Company, (IPL)
K-T Corporation, (K-T)
Knauf Fiber Glass GMBH, (Knauf)
Monaco Coach Corporation, (MCC)
NiSource, Northern Indiana Public Service Company, (NIPSCO)
Purdue University, (PU)
Quemetco, Inc., (Quemetco)
Richmond Power & Light Company, (RPL)

Following is a summary of the comments received and IDEM's responses thereto:

Historical interpretation of 326 IAC 6-3

Comment: If IDEM believes the rule should be amended to apply the requirements to processes with process weight rates less than 100 lbs/hr, then the agency is proposing a significant shift in policy that needs greater analysis and justification. (ELC)

Comment: IDEM believes (despite past permitting actions to the contrary) that 326 IAC 6-3 applies universally to all sources, including those with process weight rates less than one-hundred pounds per hour (100 lbs/hr). This is a major change in IDEM's interpretation of this rule. IDEM's historic interpretation has left small sources that cannot easily be controlled or monitored out of the program when those sources have negligible impact on the environment. This has helped make the implementation of the existing rule cost effective both in its impact on the regulated community and on agency resources. Recognizing the historical interpretation of this rule, IDEM should formally add the historical application of the rule to the rule language in any future revision. (HEREC)

Comment: IDEM is attempting to change years of policy to conform to a new regulatory profile that will not provide any environmental benefit while significantly increasing the regulatory burden on the regulated community and the administrative burden on IDEM. IDEM should codify its historical interpretation of this rule that exempts sources of less than 100-lb/hr throughput from the rule. (AEP)

Comment: The proposed revisions to expand the applicability of the rule to include sources with process weight rates less than 100 lbs/hr will significantly impact manufacturing, research and development, and administrative operations. We strongly disagree with IDEM's view that the process weight rate rule applies to sources with process weight rates less than 100 lbs/hr. 326 IAC 6-3-2(c) clearly excludes processes with process weight rates less than 100 lbs/hr. (ELC)

Response: The purpose of this rulemaking is to clarify IDEM's position that processes emitting below 100 lbs/hr can have significant emissions and that there are public health and quality of life reasons for controlling particulate emissions from such processes. The applicability language of the current rule does not explicitly exclude processes with process weight rates less than one hundred pounds per hour. The language in the current rule states, "This rule establishes emission limitations for particulate emissions from process operations located anywhere in the state" [326 IAC 6-3-1(a)] and "Process Operations: No person shall operate **any** process so as to produce, cause, suffer or allow particulate matter to be emitted in excess of the amount shown in the following table" [326 IAC 6-3-2(c), emphasis added]. IDEM believes based on this language that the rule is applicable to any processes which emit particulate matter, other than those specifically exempted in the rule. IDEM does not believe that there is a specific exemption in the rule for processes with process weight rates less than one hundred pounds per hour; this rulemaking will make that absolutely clear. However, in this rulemaking IDEM also intends to exempt some processes with extremely low particulate emissions from 326 IAC 6-3.

Comment: IDEM has failed to adequately address the fact that sources with process throughput of less than 100 lbs/hr do not contribute to any exceedence of an applicable NAAQS, nor do they threaten to deteriorate air quality in areas in which the air is cleaner than the NAAQS. The comment that small sources may collectively have significant emissions is an assertion unsupported by any evidence in the record. (MCC, Glaval, Charleston)

Response: IDEM cannot state as definitively as the commenter that sources with low process weight rate do not contribute to any exceedance of a NAAQS. Whether or not they rise to the level of exceeding a NAAQS, processes with emission rates below 100 lbs/hr can have significant particulate emissions. The purpose of this rulemaking is to clarify that processes with throughput of less than 100 lbs/hr are subject to 326 IAC 6-3. There are valid public policy reasons for controlling these levels of emissions that include quality of life reasons as well as the ability to regulate nuisances to neighbors from small particulate matter emitting operations. Also, because 326 IAC 6-3 has been approved as part of the state implementation plan (SIP), U.S. EPA may view an exemption for processes less than 100 lb/hr to be a relaxation of the SIP.

Comment: Rule 6-3 incorporates emission limitations based upon control technology which existed over fifty (50) years ago. It also addresses particulate matter, and not PM-10 or PM 2.5. When more stringent control was needed for particulate nonattainment areas, separate (Rule 6-1) was adopted. Thus, the Agency's comment that the SIP for PM-10 "relies" on Rule 6-3 is not true. Rule 6-3 is superceded by Rule 6-1 in all former TSP nonattainment areas and in all current PM-10 nonattainment areas. (MCC, Glaval, Charleston)

Response: Although particulate matter emissions are currently regulated by U.S. EPA as PM-10, in the past they were regulated as total suspended particulates (TSP). Early rules promulgated to address particulate matter emissions including the process weight rate rule (and the fugitive dust rule) were approved as part of the TSP state implementation plan (SIP) as early as 1982. Periodically, U.S. EPA is required to reexamine existing standards to assure that they remain protective of public health. If the existing standard is deemed insuffi-

cient to protect public then U.S. EPA is required to promulgate a standard that will protect public health. Such was the case with the particulate matter standard. Since 1993 particulate matter emissions have been regulated as PM-10 in counties where it was determined that particulate emissions exceeded the U.S. EPA revised particulate matter standard (PM-10). Those areas, sources and processes that did not exceed the revised PM-10 standard are not addressed in the revised PM-10 rules but continue to be regulated under the existing particulate (TSP) rules. Because the SIP does not allow a relaxation of its requirements, the particulate matter SIP as well as Article 6 include both PM-10 rules and TSP rules. When the revised PM-2.5 is implemented, the particulate matter SIP will also include PM-2.5 rules for those areas of the state that do not meet the new revised federal standard.

Comment: Commenters request that IDEM reconsider commenters' January 31, 2000, comments. (MCC, Glaval, Charleston)

Response: In this second response to comments IDEM is again responding on the merits to comments addressing smaller sources/insignificant activities/de minimis levels, exemption of specific operations, and consideration of the economic reasonableness of regulating sources subject to this rule, that were submitted by the commenter in response to the request for comments from the first comment period.

Requisite factors that must be taken into account by a board adopting rules

Comment: IDEM has failed to address the requirements of IC 13-14-8-4 that proposed rules must address existing air quality and the economic reasonableness of reducing a particular type of pollutant. The record is devoid of any analysis of what air quality improvement will be realized by making Rule 6-3 applicable to sources with process weight rates below 100 lbs/hr or of the economic impact on those sources. (MCC, Glaval, Charleston)

Response: IC 13-14-8-4 lists a number of factors that a board adopting and establishing environmental regulations must take into account including IC 13-14-8-4(4) ("the nature of the existing air quality or existing water quality, as appropriate") and IC 13-14-8-4(6) ("economic reasonableness of measuring or reducing any particular type of pollution"). The purpose of this rulemaking is to clarify an ambiguity concerning the applicability of the existing rule. IDEM recognizes that processes that emit less than 100 lbs/hr may have significant but local air quality impacts. Because of past inconsistent application of this rule and continuing questions regarding the applicability of the process weight rate rule to processes that emit less than 100 lbs/hr, this rulemaking clarifies that processes that emit less than 100 lbs/hr have been and continue to be subject to the process weight rule. Because processes that emit less than 100 lbs/hr have been subject to this rule, the clarification of the applicability of the rule should not result in additional costs associated with adding controls or certifying compliance. If a source that is subject to the process weight rate rule is not currently in compliance with the rule, there could be costs associated with coming into compliance.

Definition of terms

Comment: IDEM should include a section in the proposed rule containing definitions of terms referred to within the proposed rule. IDEM should include the definition of "process" in a definition section of the proposed rule along with all other applicable terms referred to in the context of the proposed rule. (IPL)

Response: Many of the terms referred to in the proposed rule are defined in 326 IAC 1-2, the definition section of the general provisions. These definitions are applicable throughout Title 326, unless a term is defined differently in a particular rule for the purposes of that rule. Because the terms used in 326 IAC 6-3 are consistent with the way they are defined in 326 IAC 1-2, it is appropriate to rely on definitions of general applicability (i.e., 326 IAC 1-2).

Comment: 326 IAC 6-3 should be clarified to resolve all long standing issues with the definition of "Process weight; weight rate" in 326 IAC 1-2-59. As an example, if a source paints steel beams, under 326 IAC 1-2-59, the process weight is the total weight of all materials introduced in any source operation. However, particulate matter emissions are likely to occur from over-spray and would not be affected by the weight of the beams being painted. The same may be true for welding, shot blasting, etc. The last statement of 326 IAC 1-2-59 seems to imply that if there is more than one interpretation, then the interpretation that results in the minimum value for allowable emissions shall apply. The statement may be what IDEM uses to resolve discrepancies in determining what introduced materials constitute the total weight entered into a process. (City/ERMD)

Response: IDEM agrees that 326 IAC 1-2-59 states that if there is more than one interpretation of what is to be included in the determination of process weight rate, the most conservation interpretation applies. For instance if the nature of a process could be interpreted as either batch or long run steady state, then the proper interpretation is the one that results in the lowest allowable emission rate.

Rule applicability

Comment: IDEM continues to believe that fugitive dust should be dealt with in the process weight rates rule. The proposed fugitive dust rule as currently drafted includes emissions from process operations and much more. Besides the fact that multiple definitions of fugitive dust seem to be counterproductive, multiple regulations dealing with management of fugitive dust seem to be even more counterproductive. IDEM should review its multiple approaches to fugitive dust and streamline the regulation into a single rule. (INCMA)

Comment: The rule language should be modified to clarify that the rule only applies to process or stack sources, not fugitive sources of emissions, especially roadways [and] other open areas that are not typically processes. (NIPSCO)

Comment: IDEM should clarify that the rule applies to stack sources and not fugitive sources. This rule was designed for stack sources, not fugitive emissions, as those emissions are regulated under the fugitive dust rule. IDEM should clarify that this rule does not cover fugitive emissions.(BSC, CCI, ECC, GCC, K-T, Knauf, Quemetco, RPL)

Response: In responding to these comments it is important to distinguish between "fugitive dust" and "process fugitives" or "fugitive emissions". The fugitive dust rule, 326 IAC 6-4, only applies to emissions that actually cross sources' property lines. The process weight rate rule, 326 IAC 6-3, applies to emissions, including fugitive emissions, from process operations, whether or not they cross a property line. Thus, the process weight rate rule regulates the emissions rate from the process, while the fugitive dust rule regulates such emissions if they cross the property line. Both rules could apply to emissions from a particular process.

Comment: Does IDEM consider particulate matter emissions generated by coal conveyor systems, conveyor transfer points, and aggregate (coal) storage pile operations to be included in the definition of "process?" (IPL)

Comment: Do processes such as coal handling and conveying fall within the scope of 326 IAC 6-3? (HEREC)

Response: Loading or unloading of coal and conveying and handling coal meet the definition of "process" in 326 IAC 1-2-58; therefore 326 IAC 6-3 is applicable. In most circumstances, roadways and storage piles do not meet the definition of "process".

Comment: If the process weight rate rule applies to coal conveyor systems, coal conveyor transfer points, and aggregate storage pile operations, it is unreasonable for IDEM to regulate such sources that

may otherwise be covered under other particulate matter emission control regulations. (IPL)

Response: A source is subject to all applicable requirements. Because a source is subject to a given particulate matter emission control rule does not preclude the source from being subject to additional particulate matter control rules.

Insignificant/trivial/exempt activities

Comment: IDEM should exempt insignificant activities from this rule. The sources and thresholds defined as insignificant activities under 326 IAC 2-7-1(21) should be exempt from application of this rules. IDEM should modify the draft language at 326 IAC 6-3-1 as follows:

(a) This rule establishes emission limitations for particulate emissions from process operations located anywhere in the state, except for those activities that satisfy the definition of insignificant activities under 326 IAC 2-7-1(21), and except for fugitive emission sources that are regulated under 326 IAC 6-4 and 6-6-5. (BSC, CCI, ECC, GCC, K-T, Knauf, Quemetco, RPL)

Comment: IDEM's suggestion to use the insignificant and trivial source lists in 326 IAC 2-7-1 as a starting point for a blanket exemption is a step in the proper direction. While these lists would serve as a practical basis for an exemption, there are undoubtedly additional small sources that merit inclusion in the exemption list. IDEM should explicitly list in this rule the sources exempt from its scope as part of 326 IAC 6-3-1(b). (AEP, GE, IPL, NIPSCO)

Comment: Subsection 326 IAC 6-3-2(e)(2) should be deleted and replaced with a *de minimis* emission provision that effectively exempts all trivial or insignificant sources from regulation under this rule. (IPL)

Comment: The following specific processes listed in the definition of "insignificant activity" should be exempted from the process weight rate rule:

- Research and development activities defined in 326 IAC 2-7-1(21)(E)
- Fuel dispensing activities described in 326 IAC 2-7-1(21)(G)(ii)
- VOC and HAP storage as described in 326 IAC 2-7-1(21)(G)(iii)
- Packaging and filling activities as described in 326 IAC 2-7-1(21)(G)(v)
- Production-related activities described in 326 IAC 2-7-1(21)(G)(vi)
- Solvent recycling systems as described in 326 IAC 2-7-1(21)(G)(viii)
- Water-based activities described in 326 IAC 2-7-1(21)(G)(ix)
- Trimmers as described in 326 IAC 2-7-1(21)(G)(xi)
- Conveyors as described in 326 IAC 2-7-1(21)(G)(xiv)
- Coal bunker and coal scale exhausts and associated dust collector vents as described in 326 IAC 2-7-1(21)(G)(xv)
- Grinding and machining operations as described in 326 IAC 2-7-1(21)(G)(xxiii)

(GE)

Comment: We support IDEM's proposal to add dip coating to the list of processes that are exempt from the process weight rate rule and suggest that a similar process be added - roll coating. (GE)

Comment: 326 IAC 3-1-(b) *[sic.]* should include the following:

6. Processes listed in 326 IAC 2-1.1-3(d)(4).

7. Processes with a maximum process weight rates less than one hundred (100) pounds per hour.

8. Processes with the potential to emit less than five (5) tons per year of particulate matter.

(ELC)

Comment: The intent of 326 IAC 6-3 is to establish particulate matter emission limitations for processes not otherwise limited by 326 IAC 6, 326 IAC 2, or 326 IAC 2-7. 326 IAC 2-7-1(21)(D) through (G) and 326 IAC 2-7-1(40) is a listing of what activities are likely, in and of themselves, to not exceed minimum permitting threshold. It must be understood that sources can have applicable requirements but not necessarily require a permit. An amended 326 IAC 6-3 should not specifically address that particulate matter limits would only apply to emission units above insignificant activity thresholds. The original intent of 326 IAC 6-3 included the concept of regulating nuisances to neighbors from small particulate matter emitting operations and regulating fugitive sources not otherwise regulated by 326 IAC 6-4 or 6-5. If IDEM does not want to exempt categories of activities from quantifying their particulate matter emission rate, the trivial activity list under 326 IAC 2-7-1(40) more than likely contains activities that have negligible regulated pollutant emission rates. (City/ERMD)

Comment: As currently proposed, the rule would specify that any process with a process weight rate of less than 100 pounds per hour would be required to meet an emission limit of 0.551 pounds of particulate matter per hour. Any process operation, regardless of size is required to comply with particulate matter under the draft rule. Because the West Lafayette campus will ultimately be part of a Title V permit, we will be required to provide a certification annually in regards to its compliance status will all applicable requirements. "Process" is defined under 326 IAC 1-2-58 as:

"Any action, operation, or treatment and the equipment used in connection therewith, and all methods or forms of manufacturing or processing that may emit air contaminants."

Given the broad definition of "process," there may be many activities that occur on campus on a very small scale, particularly in teaching laboratories and research and development facilities, that could be affected by this rule. It would be virtually impossible to identify all activities (particularly those of an intermittent nature) which "process" less than 100 pounds per hour. Rule 6-3 should be revised to indicate that the rule does not apply to insignificant activities or trivial activities (as defined under 326 IAC 2-7) that have a process weight rate below 100 pounds per hour. (PU)

Response: IDEM agrees that trivial activities as defined at 326 IAC 2-7-1(40) should be exempt from 326 IAC 6-3 and has added trivial activities to the list of processes that are exempt from the rule. IDEM has also proposed to exempt many, but not all, activities defined as insignificant at 326 IAC 2-7-1(21). Those activities in 326 IAC 2-7-1(21) that will continue to be subject to 326 IAC 6-3 are activities that can have a significant impact on air quality even though they are not considered "significant" for Title V permitting purposes. Additionally, dip coating, dip galvanizing, and roll coating have been exempted from the rule.

***de minimis* exemption threshold**

Comment: It is critical for the process weight rate rule to have a *de minimis* threshold for identifying the processes that are not subject to the rule. Otherwise, the rule will apply to numerous activities with minimal air quality impact. The definition of process ("any action, operation, or treatment and the equipment used in connection therewith") includes virtually all activities capable of emitting any quantity of air contaminants. Under IDEM's proposal, not only will the rule apply to small manufacturing or research and development equipment, but also to equipment as mundane as office pencil sharpeners and paper shredders. (ELC)

Comment: 326 IAC 6-3-2(e) does not provide for an exemption for processes that are below 100 lbs/Hr. IDEM currently applies the process weight rule to processes with process weight rates that are blow the 100 lbs/hr threshold. This results in the application of the rule to emission units with very low emission rates - emission units that are small enough they would not require permit review by IDEM.

IDEM is establishing compliance monitoring requirements for these

low-emitting units in new source permits and operating permits. IDEM should declare that any process with a process weight rate less than 100 lb/hr is exempt from 326 IAC 6-3. (AEP, IMA, MCC/BT, Glaval, Charleston)

Comment: While IDEM stated it did not request numerical thresholds for any exemptions, we suggest it would be logical and appropriate to include a numerical threshold. The threshold would be based on the lowest allowable emission rate in the rule - 0.551 lbs/hr. Any process whose potential emissions do not exceed 0.551 would be exempt from the process weight rate rule. Since 0.551 lbs/hr is the lowest allowable emission rate that IDEM is proposing, it is logical to exempt any process whose potential emissions are no more than 0.551 lbs/hr. Including this numerical threshold would [not] disfavor the environment in any way, emissions from such activities are already exempt. It would, however, simplify compliance with the rule, thereby reducing the regulatory burden on the affected sources. (GE)

Comment: It may be best to resolve the issue by the proposed language of 326 IAC 6-3-2(e)(2), "When the process rate is less than one hundred (100) lbs/hr, the maximum allowable rate of emission shall not exceed 0.551 lb/hr." (City/ERMD)

Comment: As a backstop to the list of exempted items in the rule, we suggest that IDEM retain the current exemption of processes with process weight rates less than 100 lb/hr. In addition, the rule should exempt processes with low levels of particulate matter emissions. The rule should exempt processes with potential to emit particulate matter less than 5 tons per year. This is the same exemption threshold in the permit rules (326 IAC 2-1.103(d)(1)(A)). Both of these thresholds ensure that small operations and processes with low emissions are not subject to the rule if they do not appear on the list of exempted items. (ELC)

Response: The department agrees that a *de minimis* threshold in the process weight rule is an appropriate mechanism to eliminate those emitting activities for which this rule was never intended (e.g. pencil sharpeners and office paper shredders). The department agrees with the comment that "processes" with potential emissions less than 0.551 lb/hr should be exempt from the rule. This would not rule out processes with a process weight rate less than 100 lb/hr, but would exclude processes that inherently comply with the limit and do not require controls.

Specific operations

Comment: IDEM should define the term "surface coating", as used under draft 326 IAC 6-3-2(d). (BSC, CCI, ECC, GCC, K-T, Knauf, MCC)

Response: IDEM agrees that the rule should further clarify the term "surface coating." IDEM requests suggestions for defining "surface coating" for the specific purposes of this rule.

Comment: IDEM should confirm that the term "surface coating", as used under draft 326 IAC 6-3-2(d), does not apply to galvanizing at an integrated steel mill. (BSC)

Response: Galvanizing is the coating of iron or steel with rust resistant zinc through a hot dipping process. Dip galvanizing has been added to the list of exemptions in 326 IAC 6-3-1(6).

Comment: 326 IAC 6-3-2(d)(2) should be modified to remove any reference to accumulation on the ground and be left as a visible emission requirement only. (MCC)

Response: The department disagrees that the reference to "accumulate on the ground" should be removed from the rule. When control equipment is not operating properly, one obvious indication of improper operation is an accumulation of particulate matter on the ground or on a roof.

Comment: #26 IAC 6-3-2(d) needs to be clarified. It is not clear what graphic arts operations IDEM intends a dry particulate filter or equivalent control device to be used in. (City/ERMD)

Response: For the most part, graphic arts operations (e.g. printing presses) do not emit particulate matter. However, graphics arts operations that use a spray technique could emit particulate matter that would be subject to the process weight rule. Dip coating and roll coating have been added to the exemption list at 326 IAC 6-3-1(b).

Determining/certifying compliance with applicable requirements

Comment: If IDEM proceeds with the proposed amendment, the process weight rate rule will needlessly subject far too many processes to its requirements. This policy shift will result in sources expending a significant amount of administrative resources in their attempts to determine compliance with the rule, but it will result in little or no reduction in particulate matter emissions.

Expanding the applicability of this rule imposes substantial administrative burdens for sources operating those processes. If the regulated process is operating at a Title V or FESOP source, the application of the process weight rate rule must be identified as an applicable requirement in the permit. The permit may even require compliance monitoring for these processes.

Furthermore, sources will have a significantly increased burden for certifying compliance with the process weight rate limits in the annual compliance certification. Sources will be forced to expend significant resources towards determining the compliance status of these low-emitting processes. Many of these sources may not have emission factors established or allow the possibility of stack testing. Therefore, a scientific basis for the determination of compliance status may not exist.

The air quality value of subjecting the small processes and low-emitting operations needs to be evaluated closely. The process weight rate rule does not establish rigorous particulate matter emission limits. Many processes are able to meet the limits without using any emission control equipment. Most of the processes with process weight rates less than 100 lb/hr most likely will not have to employ new controls or upgrade existing controls to meet the emission limit imposed by the rule. Consequently, applying the rule to these small processes will not yield any air quality improvement; it will only increase the administrative burdens on the sources who must certify compliance with the requirement. In addition, IDEM has not [*sic*.] that any adverse air quality impacts will occur if the rule continues to apply as we believe that it has applied in the past. (ELC)

Comment: Should IDEM choose to deviate from its historic interpretation, then IDEM should make special provisions for units that have not traditionally been regulated by this rule. Specifically:

-The Agency should not require burdensome compliance monitoring for units with process weight rates less than 100 lbs/hr, nor should the agency re-open past permit decisions as a result of this change.

-This rule change should not impact the status of processes or operations that are identified as "Insignificant Activities" under the Title V permit rules.

-For processes or operations located at sources operating under a Title V Operating Permit, the agency should clearly identify as part of this rulemaking what types of data and information that must be provided as part of an annual compliance certification.

-If a source owner or operator did not identify a process or operation with a process weight rate less than 100 lbs/hr in a permit application based on previous agency guidance which may have led the applicant to believe that such processes were not affected by the rule, the agency must provide the opportunity to revise the affected permit applications with no enforcement repercussions. (HEREC)

Response: As previously stated, in situations where a source owner or operator did not previously identify a process with a process weight rate less than one hundred (100) lbs/hr, IDEM will use enforcement discretion in allowing a source the opportunity to revise permit applications where previous agency guidance was not clear.

The applicability of compliance monitoring is not affected by the applicability of 326 IAC 6-3 to facilities with a process weight rate less than 100 lbs/hr nor will the applicability of 326 IAC 6-3 change any insignificant activity classification. However, an insignificant activity to which a limit under the rule applies is considered a specifically regulated insignificant activity (which requires that appropriate operating conditions addressing the rule applicability be included in a Part 70 permit).

Comment: Consolidating the exemptions from 326 IAC 6-3-1 and 326 IAC 11-1-1 would simplify the rule language and allow a reader to more easily determine applicability and compliance responsibilities. (INCMA)

Response: 326 IAC 6-3-1 establishes emission limitations for particulate emissions from process operations located anywhere in the state. 326 IAC 11-1-1 establishes emission limitations for particulate matter from foundries in operation on or before December 6, 1968, and those in operation after December 6, 1968. Consolidating the exemptions from 326 IAC 11-1-1 into 326 IAC 6-3-1 would require a reduction in allowable emissions from foundry cupolas in existence prior to December 6, 1968. It is not the intent of IDEM to require new or additional controls to insure compliance with applicable requirements for sources that currently in compliance with applicable requirements.

Control methods and work practices

Comment: In 326 IAC 6-3-2(d), the work practices seem to be less related to environmental protection and more oriented toward worker safety issues–clearly an OSHA responsibility. (INCMA)

Response: 326 IAC 6-3-2(d) requires operation of particulate matter controls and that overspray not be detectable. These requirements and work practices are directly related to reducing emissions to the environment.

Process weight rate table

Comment: The table set out in 326 IAC 6-3-2(e) should be deleted. IDEM and the regulated community should merely rely on the formulas set out therein. (BSC, ECC, GCC, K-T)

Comment: We support IDEM's four corrections in the table of allowable rates of emissions in draft 326 IAC 6-3-2(e).

In addition, every allowable rate of emission in the table contains 3 significant units, with the exception of the allowable rates for the process weight rates of 8,000 lbs/hr, 9,000 lbs/hr, 10,000 lbs/hr, and 12,000 lbs/hr. We see no reason why the allowable rates for these process weight rates should contain 4 significant figures instead of 3, as the other do. We request that the allowable rates (in lbs/hr) for the above referenced process weight rates be changed form 10.40 to 10.4; 11.20 to 11.2, 12.00 to 12.0, and 13.60 to 13.6, respectively. This would simply involve dropping the trailing zero from the allowable rate. (GE)

Response: The allowable rates in the table were based on the equations presented in the footnotes and is included for the convenience of sources and the public. IDEM agrees that statistically the limits for process weight rates eight thousand (8,000), nine thousand (9,000), ten thousand (10,000), and twelve thousand (12,000) lb/hr all have one too many significant figures with respect to the other table entries and will amend these entries. However, it should be noted that if a compliance determination is made and an emission rate exceeds the absolute value of the listed limit, the exceedance indicates that control devices are not operating correctly. In making a compliance determination if the test protocols and methodology use constants that have more significant figures than the table, then the test protocols and methodology results will be used to determine compliance with this rule.

Compliance requirements/options

Comment: If IDEM insists on including 326 IAC 6-3-2(d), then a source involved with surface coating should be allowed the choice of complying with 326 IAC 6-3-2(d) surface coating requirements or 326 IAC 6-3-2(e) process operations allowable emissions. Moving surface coating from its previous control technology in the rule is unnecessary and without a reasonable basis. (INCMA)

Comment: 326 IAC 6-3-2(d).

(1) This subsection must be removed. Manufacturer's specifications are not necessarily applicable to site specific application, but rather are a general guide in operation/installation of the equipment.

(ELC)

Response: 326 IAC 6-3-2(d) is intended to replace the applicability of the allowable emissions in 326 IAC6-3-2(e) because it is not practical to calculate an allowable limit for surface coating operations and, therefore, impractical to determine compliance. If a process is controlled using an appropriate control device and acceptable work practice standards including operating the process and control equipment as specified by the manufacturer, for purposes of the process weight rate rule, the operation is in compliance with the rule.

Comment: 326 IAC 6-3-2(d) should be amended to read as follows:

(3) "A particulate matter control device is not required for operations that use less than ten (10) gallons of coating per day. An operation that is subject to this section shall remain subject to this section until such time that 365 continuous days of usage data is available to confirm the future intended use of the operation. At any time the coating application rate increases to greater than 10 gallons per day particulate matter control devices must be in place".

(ELC)

Response: The department agrees that the addition of "particulate matter" is a good suggestion as the current language literally says that no control device [of any kind] would be needed for a less than 10 gal/day operation. The department agrees that any time the coating application rate increases to ten (10) gallons per day particulate control devices must be in place.

It is not the intent of the department to allow for annual averaging for any process weight operation that is required to use control technologies and meet work practice standards.

Calculation of allowable emissions

Comment: 326 IAC 6-3-2(e) should be amended to read as follows:

(1) "The ~~maximum~~ allowable rate of emission shall be based on the maximum process weight rate for an operation."

This interpretation has been agreed upon by its use in existing permit documents. Individual allowable limits have been established in Section D of permits based on the maximum process weight rate. Therefore, compliance would be based on the documented limit for the operation as stated in the permit. It is necessary to plainly clarify this position to give sources the opportunity to know which "bar" they are using for compliance certifications.

(2) This subsection must be removed. The rule should be clarified that it does not apply to operations with process weight rates less than 100 lb/hr.

(ELC)

Response: IDEM does not agree that "maximum" should be deleted from this sentence. Clarification of what is the maximum applicable limit is currently provided for by establishing the limit in a permit. The maximum allowable rate does not apply at process weight rates below the maximum process weight rate. When determining hourly compliance, the actual process weight rate at which the process is operating shall be used to establish the allowable rate of emissions during that hour of operation. To do so otherwise would not ensure that a process is being properly maintained and controlled and the environment protected.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 12, 2001, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of

amendments to 326 IAC 6-3. Comments were made by the following parties:

Barnes and Thornburg (Jim Hauck), (BT)
General Electric Company, (GE)
Indiana Chamber of Commerce, (ICoC)
Monaco Coach Corporation, (MCC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: While the rule isn't perfect and there are still issues to be resolved, we do not object to preliminary adoption of the rule. (GE, ICoC)

Response: The department appreciates the support for preliminary adoption of this rule. The department is willing to work with any interested party to develop draft rule language with work practice and control technology standards for additional categories of process operations and solicits draft rule language to accomplish these goals.

Comment: The *de minimis* that is being established in the rule is too low. (MCC)

Response: The department believes that the *de minimis* thresholds established in the rule are at an appropriate level to eliminate those activities that do not have a significant environmental impact.

Comment: If there's an insignificant activity rule that sets particulate emissions at five pounds per hour, twenty-five pounds per day, why can't we have one number incorporate the insignificant activity? (MCC)

Comment: All insignificant activities that are listed in the current Title V rule should be incorporated into this rule. (MCC)

Response: The insignificant activities list in 326 IAC 2-7-1(21) is a threshold for activities that do not need to be specifically characterized in a major source's Title V permit application. This list was not established for emission control purposes nor does it create a presumption that emissions from those activities are of no concern. There are, in fact, activities included in the insignificant activities list that could have emissions that will impact air quality. The department has reviewed the insignificant activities list and has exempted some from 326 IAC 6-3 and included others. While the list of insignificant activities in 326 IAC 2-7-1(21) is a good starting point for establishing a set of exempt activities in 326 IAC 6-3, there are categories of activities in the definition that, while appropriately exempt from inclusion in the Title V application, should not be exempt from the particulate controls established by 326 IAC 6-3. One example is conveyors at 326 IAC 2-7-1(21)(G)(iv). Conveyors may not be "insignificant" for purposes of Title V applications but they can have emissions that affect air quality in the area where they operate. Conveyors are appropriately subject to the emissions limits in 326 IAC 6-3.

Comment: A significant burden will be placed on industries in an effort to comply with this rule, with no commensurate environmental benefits. Reasonable work practices or *de minimis* levels need to be established for minor processes and record keeping is a significant time-consuming and expensive, burdensome task on insignificant sources. (ICoC)

Response: This rule is not intended to place new emission control requirements on any source that did not have them before, but rather to clarify the current rule language. Any substantive changes to the rule, in fact, should simplify compliance by 1) exempting sources that are below the *de minimis* level and 2) providing specific work practice standard requirements for specific industrial categories.

Comment: Exemptions or work practice standards should be written in for certain types of operations: welding, minor welding (that's less than one ton of rod or wire per day), torch cutting activities, paint prep (that includes the body-work activities), metal grinding, abrasive wheel cutting, fiberglass grinding activities, woodworking activities that are closed booth, dust unloading activities, and plastic grinding activities for recycling. (MCC)

Response: A number of the activities the commentor has listed are now exempt from the proposed rule. The department would welcome suggestions from any interested party on draft rule language for work practice and control technology standards in lieu of emission limits for additional categories of process operations.

Comment: Condition (2) in 326 IAC 6-3-2(d) should be modified to remove any reference to accumulations on the ground and be less strict as a visible emissions requirement. (MCC)

Response: The department disagrees. An accumulation of particulate emissions at the exhaust of an operation with a potential to emit particulate matter that is controlled by a dry particulate filter or an equivalent control device indicates that the control device is not operating properly and is therefore not complying with this rule.

Comment: The term "operation" as used in 326 IAC 6-3-2(d)(3) should be defined. (MCC)

Response: "Operation" as used in 326 IAC 6-3-2(d)(3) refers specifically to surface coating, reinforced plastics composites fabricating, or graphic arts processes. "Process" is defined at 326 IAC 1-2-58.

Comment: We endorse the comments that will be made by IMA and some of the other industrials. (BT)

Response: Although the IMA did not comment on this rule at this hearing, the department acknowledges the commentor's endorsement of comments made by the other companies.

326 IAC 6-3-1
326 IAC 6-3-2

SECTION 1. 326 IAC 6-3-1 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-3-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 1. (a) This rule establishes emission limitations for particulate emissions from process operations located anywhere in the state.

(b) The following processes and their attendant emissions are exempt from this rule:

(1) Combustion for indirect heating.
(2) Incinerators.
(3) Open burning.
(4) Existing foundry cupolas **that are subject to the requirements of 326 IAC 11-1.**
(5) Dip coating.
(6) Dip galvanizing.
(7) Roll coating.
(8) Insignificant activities defined at 326 IAC 2-7-1(21), provided the criteria for being an insignificant activity under 326 IAC 2-7-1(21) are met. The following insignificant activities are not exempt from this rule:
(A) 326 IAC 2-7-1(21)(A).
(B) 326 IAC 2-7-1(21)(B).
(C) 326 IAC 2-7-1(21)(C).
(D) 326 IAC 2-7-1(21)(G)(vi)(DD).
(E) 326 IAC 2-7-1(21)(G)(vi)(EE).

(F) 326 IAC 2-7-1(21)(G)(vi)(II).
(G) 326 IAC 2-7-1(21)(G)(ix).
(H) 326 IAC 2-7-1(21)(G)(xi).
(I) 326 IAC 2-7-1(21)(G)(xiv).
(J) 326 IAC 2-7-1(21)(G)(xv).
(K) 326 IAC 2-7-1(21)(G)(xviii).
(L) 326 IAC 2-7-1(21)(G)(xxvi).
(M) 326 IAC 2-7-1(21)(G)(xxviii).

(9) Trivial activities as defined at 326 IAC 2-7-1(40).

(10) Processes with potential emissions less than five hundred fifty-one thousandths (0.551) pound per hour.

~~(b)~~ **(c)** If any limitation **is** established:

(1) by this rule **that** is inconsistent with applicable limitations contained in 326 IAC 6-1; **or**

(2) by 326 IAC 12 concerning new source performance standards; ~~or~~

~~(3) in a Part 70 permit in accordance with 326 IAC 2-7-24;~~

then the limitation contained in this rule shall not apply, but the limit in ~~such sections or Part 70 permit,~~ **326 IAC 6-1, or 326 IAC 12**, **as applicable,** shall apply. *(Air Pollution Control Board; 326 IAC 6-3-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2499; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2367)*

SECTION 2. 326 IAC 6-3-2 IS AMENDED TO READ AS FOLLOWS:

326 IAC 6-3-2 Particulate emission limitations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 2. **(a) Any process operation listed in subsections (b) through (d) shall follow the work practices and control technologies contained therein. All other process operations subject to this rule shall calculate emission limitations according to requirements in subsection (e).**

~~(a) Cement Kilns: No owner or operator of a~~ **(b)** Cement manufacturing ~~operation~~ **kilns** commencing operation prior to December 6, 1968, ~~equipped with electrostatic precipitators, bag filters or equivalent gas-cleaning devices~~ shall **not** cause, allow, or permit any discharge to the atmosphere any gases containing particulate matter in excess **of the following:**

(1) $E = 8.6\ P^{0.67}$, below thirty (30) tons per hour of process weight.

(2) $E = 15.0\ P^{0.50}$, over thirty (30) tons per hour of process weight.

Where: E = Emission rate in pounds **per** hour. ~~and~~
P = Process weight in tons **per** hour.

~~(b)~~ **(c)** Catalytic cracking units ~~The owner or operator of a catalytic cracking unit~~ commencing operation prior to December 6, 1968, and ~~which is~~ equipped with cyclone separators, electrostatic precipitators, or other gas-cleaning systems shall recover **ninety-nine and ninety-seven hundredths percent** (99.97%) or more of the circulating catalyst or total gas-borne particulate.

(d) Surface coating, reinforced plastics composites fabricating operations, or graphic arts operations with a potential to emit particulate matter shall be controlled by a dry particulate filter or an equivalent control device, subject to the following:

(1) The source shall operate the particulate control device in accordance with manufacturer's specifications.

(2) Overspray shall not be visibly detectable at the exhaust or accumulated on the ground.

(3) A particulate matter control device is not required for operations that use less than ten (10) gallons of coating per day. At any time the coating application rate increases to greater than ten (10) gallons per day, particulate matter control devices must be in place. An operation that is subject to this subsection shall remain subject to it notwithstanding any subsequent decrease in gallons of coating used.

~~(c)~~ **(e)** Process operations **to which control methods in subsections (b) through (d) do not apply shall calculate allowable emissions as follows:**

(1) No person shall operate any process so as to produce, cause, suffer, or allow particulate matter to be emitted in excess of the amount shown in the ~~following~~ table **in this subsection. The maximum allowable rate of emission shall be based on maximum process weight rate for an operation.**

(2) When the process weight rate is less than one hundred (100) pounds per hour, the maximum allowable rate of emission shall not exceed five hundred fifty-one thousandths (0.551) pound per hour.

(3) When the process weight exceeds two hundred (200) tons per hour, the maximum allowable emission may exceed that shown in the following table, provided the concentration of particulate matter in the discharge gases to the atmosphere is less than one-tenth (0.10) pound per one thousand (1,000) pounds of gases:

Allowable Rate of Emission Based on Process Weight Rate[1]

Process Weight Rate		Rate of Emission	Process Weight Rate		Rate of Emission
Lbs/Hr	Tons/Hr	Lbs/Hr	Lbs/Hr	Tons/Hr	Lbs/Hr
100	0.05	0.551	16,000	8.00	16.5
200	0.10	0.877	18,000	9.00	17.9
		~~1.40~~			
400	0.20	**1.39**	20,000	10.00	19.2
600	0.30	1.83	30,000	15.00	25.2
800	0.40	2.22	40,000	20.00	30.5
1,000	0.50	2.58	50,000	25.00	35.4
1,500	0.75	3.38	60,000	30.00	40.0
2,000	1.00	4.10	70,000	35.00	41.3
2,500	1.25	4.76	80,000	40.00	42.5
3,000	1.50	5.38	90,000	45.00	43.6

		~~5.96~~			
3,500	1.75	**5.97**	100,000	50.00	44.6
4,000	2.00	6.52	120,000	60.00	46.3
5,000	2.50	7.58	140,000	70.00	47.8
					~~49.0~~
6,000	3.00	8.56	160,000	80.00	**49.1**
					~~51.2~~
7,000	3.50	9.49	200,000	100.00	**51.3**
		~~10.40~~			
8,000	4.00	**10.4**	1,000,000	500.00	69.0
		~~11.20~~			
9,000	4.50	**11.2**	2,000,000	1,000.00	77.6
		~~12.00~~			
10,000	5.00	**12.0**	6,000,000	3,000.00	92.7
		~~13.60~~			
12,000	6.00	**13.6**			

~~When the process weight exceeds two hundred (200) tons/hour, the maximum allowable emission may exceed that shown in the table, provided the concentration of particulate matter in the discharge gases to the atmosphere is less than (0.10) pounds per one thousand (1,000) pounds of gases.~~

[*1]Interpolation of the data in this table for process weight rates up to sixty thousand (60,000) ~~lbs/hr~~ **pounds per hour** shall be accomplished by use of the equation:

$$E = 4.10\ P^{0.67}$$

and interpolation and extrapolation of the data for process weight rates in excess of sixty thousand (60,000) ~~lbs/hr~~ **pounds per hour** shall be accomplished by use of the equation:

$$E = 55.0\ P^{0.11} - 40$$

Where: E = Rate of emission in ~~lbs/hr and~~ **pounds per hour.**

P = **Maximum** process weight in ~~tons/hr.~~ **tons per hour.**

(Air Pollution Control Board; 326 IAC 6-3-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2499)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 1, 2001 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 6-3 concerning process weight rates.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Patricia Troth, Rules Development Section, (317) 233-5681 or (800) 451-6027, press 0, and ask for 3-5681 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-1785. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification. Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Management

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #00-44(2)

DIGEST

Amends 326 IAC 4-2 and 326 IAC 9-1. Readopts 326 IAC 1-6, 326 IAC 8-7, 326 IAC 8-9, 326 IAC 8-11, and 326 IAC 18-2. Repeals 326 IAC 19-1. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: March 1, 2000, Indiana Register (23 IR 1488).

Continuation of First Notice of Comment Period: May 1, 2000, Indiana Register (23 IR 2109).

Second Notice of Comment Period: October 1, 2000, Indiana Register (24 IR 132).

Republication of Second Notice of Comment Period: January 1, 2001, Indiana Register (24 IR 1139).

Notice of First Hearing: January 1, 2001, Indiana Register (24 IR 1179).

First Public Hearing: March 7, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

Portions of this proposed rule are substantively different from the draft rule published on January 1, 2001 at 24 IR 1139. The Indiana Department of Environmental Management (IDEM) is requesting

comment on the following portions of the proposed (preliminarily adopted) rule that are substantively different from the language contained in the draft rule.

The following sections of the proposed rule are substantively different from the draft rule:

326 IAC 4-2-2
326 IAC 9-1-1
326 IAC 9-1-2

This notice requests the submission of comments on the sections of the rule listed above, including suggestions for specific amendments to those sections. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Comments on additional sections of the proposed rule that the commentator believes are substantively different from the draft rule may also be submitted for the consideration of the department. Mailed comments should be addressed to:

#00-44 Sunset reauthorization
Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015.
Indianapolis, Indiana 46206-6015

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments in any form must be postmarked, hand delivered, or faxed by June 21, 2001.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from October 1, 2000, through October 30, 2000, and January 1, 2001, through January 31, 2001, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On March 7, 2001, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 4-2-2, 326 IAC 9-1-1, and 326 IAC 9-1-2, proposed reauthorization of 326 IAC 1-6, 326 IAC 8-7, 326 IAC 8-9, 326 IAC 8-11, 326 IAC 18-2, and repeals 326 IAC 19-1. Comments were made by the following parties:

Bernie Paul, Eli Lilly and Company (ELC)
Michael Scanlon, attorney representing Monaco Coach Corporation and also supported by Glaval Corporation, Charleston Corporation, Aker Plastics, Gulf Stream Coach, AK Industries and JayCo, Inc. (MCC)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: The board should use two criteria when evaluating old rules up for re-adoption. First, does the existing regulation achieve its purpose or is it necessary because other regulations achieve the same purpose or supercede its requirements. Second, the board should establish standards where IDEM, the public, and the regulated person can determine compliance. (ELC)

Response: IDEM has evaluated existing rules subject to the sunset provision to determine whether they still achieve the purpose for which they were intended. Some rules are being revised, some readopted as is, and one is being repealed, 326 IAC 19-1, Employee Commute Options. The department agrees that the board should establish standards through rules that ensure proper determination of compliance. An example is the proposed revisions to 326 IAC 4-2 and 9-1. These revisions will establish more clearly what is required of the source and what is necessary to determine compliance.

Comment: 326 IAC 4-2 needs updating. For many incinerators, the effects of this rule are superceded by new federal and state regulations for certain types of incinerators. If an incinerator is subject to one of the new federal standards, it should not be subject to any aspect of 326 IAC 4-2. However, IDEM proposes to exempt sources only from the particulate emission limitation in 326 IAC 4-2. The proposed exemption does not go far enough for highly regulated incinerators and imposes old requirements that have little value in today's regulatory environment. (ELC)

Response: IDEM is considering exempting sources subject to national emission standards for hazardous air pollutants (NESHAP) and solid waste combustion (Section 111(d)/129) standards from additional portions of 326 IAC 4-2 that are duplicative of these federal standards. Certain requirements are not covered by the NESHAP or solid waste combustion standards. For example, 326 IAC 4-2-2(a)(1) which requires that "incinerators shall be composed of primary and secondary chambers", should continue to apply to all incinerators, because the federal standards do not address the requirement for primary and secondary chambers. This requirement ensures proper combustion and is consistent with other states' incinerator rules.

Comment: For incinerators not subject to the new federal regulations, 326 IAC 4-2 includes several vague and open-ended requirements related to the design and operation of an incinerator that do not assure proper control of particulate emissions. 326 IAC 4-2-2(a)(4) and (5) require the incinerator to be operated and maintained in accordance with the manufacturer's specifications and recommendations. If the source has found that the system performs better under scenarios not in the manufacturer's recommendations, would the source state in its compliance certification that it is not in compliance because it is not strictly following the manufacturer's recommendations even though it is meeting its emission limits? We recommend that the rule apply only to incinerators not subject to new state and federal requirements and that all but 326 IAC 4-2-2(a)(1), (2), and (7) be deleted. (ELC)

Response: 326 IAC 4-2 covers a wide variety of incinerators so it is difficult to establish a single set of operating parameters applicable to all of them. The NESHAPs and manufacturer's recommendations provide basic standards that are specific for each type of incinerator, however, the department is considering adding language to increase the flexibility for sources that desire alternative ways to demonstrate compliance with the emission limits.

Comment: We agree with the proposed amendment to 326 IAC 9-1 that exempts incinerators subject to the new federal and state incinerator requirements. At this time, we are not prepared to support or disagree with the proposal to require incinerators to use direct flame afterburners operating at 1300 degrees Fahrenheit or other approved technologies to reduce carbon monoxide. IDEM needs to provide more information on the impacts of requiring a temperature monitoring device to measure 1300 degrees Fahrenheit. A portable thermometer is inappropriate and instead a more sophisticated, durable, and permanently installed thermocouple that is connected to a data collection and alarm system is needed. This is more costly than $200; IDEM should discuss all the implications of this new requirement. (ELC)

Response: The temperature requirement was intended to establish a minimum operating standard for the afterburners. However, due to the difficulty of identifying and notifying all sources that would be subject to the new requirement and the potential additional compliance costs, the department is considering removing the temperature requirement from the proposed rule and replacing it with the requirement to follow "manufacturer's recommendations" for operation.

Comment: 326 IAC 1-6-3 requires facilities to prepare preventative maintenance plans for emission control equipment, but the regulation does not specify the types of emission control equipment the rule is intended to address. Through the permitting process, IDEM requires preventative maintenance plans for equipment we believe should not be included in these. Preventative maintenance programs are intended to apply to equipment that operate with minimal operator insight and would result in an emissions increase if problems develop. This program was never intended to cover non-emitting units or systems under constant operator oversight. For these types of systems, the preventative maintenance plan requirements serve no purpose, create an additional compliance burden, and result in plans that are essentially meaningless. We are submitting additional suggested rule language to add a new subsection (c) to this section. (MCC)

Response: The department will consider further this suggestion prior to final adoption of the rule.

Comment: The specific time periods identified in 326 IAC 8-7-8(2), 326 IAC 8-7-10(b)(7), 326 IAC 8-9-6(c)(2) and (3), 326 IAC 8-9-6(d)(2) and (3), 326 IAC 8-9-6(h), 326 IAC 8-11-6(c)(3)(B)(ii)(GG), 326 IAC 8-11-9(c), 326 IAC 18-2-7(c), and 326 IAC 18-2-8(b) for submitting certain information and reports should be deleted and replaced with language stating that the information must be submitted within the time period specified in the underlying permit or approval. With the amount of information that companies are being required to collect and report through permit terms and new regulations, more time is needed to gather, enter, review, and generate the appropriate reports. This process sometimes requires two and three levels of oversight looking at thousands of data points. Under these conditions, a thirty (30) day reporting period is unreasonable and removes the flexibility to establish different time periods based on the specific needs of the company. As a result, an unnecessary burden is placed on the regulated community. By revising these regulations, IDEM and the regulated community can negotiate an appropriate time period in which to submit the information. (MCC)

Response: IDEM disagrees with removing the time frames in the rules for submitting required reports. To monitor and determine compliance on a regular and consistent basis, it is important for the department to receive information in a timely way. A change of this proportion would affect thousands of reports and would result in varying the time frames that would be inconsistent and impossible to monitor.

326 IAC 1-6-1
326 IAC 1-6-2
326 IAC 1-6-3
326 IAC 1-6-4
326 IAC 1-6-5
326 IAC 1-6-6
326 IAC 4-2-1
326 IAC 4-2-2
326 IAC 8-7-1
326 IAC 8-7-2
326 IAC 8-7-3
326 IAC 8-7-4
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326 IAC 8-9-1
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326 IAC 9-1-1
326 IAC 9-1-2
326 IAC 18-2-1
326 IAC 18-2-2
326 IAC 18-2-3
326 IAC 18-2-4
326 IAC 18-2-5
326 IAC 18-2-6
326 IAC 18-2-7
326 IAC 18-2-8
326 IAC 18-2-9
326 IAC 18-2-10.1
326 IAC 18-2-11
326 IAC 18-2-12
326 IAC 18-2-13
326 IAC 18-2-14
326 IAC 19-1

SECTION 1. 326 IAC 1-6-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 1-6-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. This rule applies to the owner or operator of any facility required to obtain a permit under 326 IAC 2-5.1 or 326 IAC 2-6.1. *(Air Pollution Control Board; 326 IAC 1-6-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; filed May 25, 1994, 11:00 a.m.: 17 IR 2238; filed Nov 25, 1998, 12:13 p.m.: 22 IR 980)*

SECTION 2. 326 IAC 1-6-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 1-6-2 Records; notice of malfunction
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-17-3

Sec. 2. (a) A record shall be kept of all malfunctions, including startups or shutdowns of any facility or emission control equipment which result in violations of applicable air pollution control regulations or applicable emission limitations and such records shall be retained for a period of three (3) years and shall be made available to the commissioner upon request. When a malfunction of any facility or emission control equipment occurs which lasts more than one (1) hour, said condition shall be reported to the commissioner or his appointed representative. Notification shall be made by telephone or telegraph, as soon as practicable, but in no event later than four (4) daytime business hours after the beginning of said occurrence. Failure to report a malfunction of any emission control equipment subject to the requirements of this rule (326 IAC 1-6) shall constitute a violation of this rule (326 IAC 1-6) and any other applicable rules. Information of the scope and expected duration of the malfunction shall be provided including the following:

(1) Identification of the specific emission control device to be taken out of service, as well as the location and permit number of such equipment.

(2) The expected length of time that the emission control equipment will be out of service.

(3) The nature and quantity of emissions of air contaminants likely to occur during the shutdown period.

(4) Any measures such as the use of off-shift labor on equipment that will be utilized to minimize the length of the shutdown period.

(5) Any reasons that shutdown of the facility operation during the maintenance period would be impossible for the following reason:

(A) continued operation is required to provide essential services, provided, however, that continued operation solely for the economic benefit of the owner or operator shall not be sufficient reason;

(B) continued operation is necessary to prevent injury to persons or severe damage to equipment.

(6) A demonstration that interim control measures have reduced or will reduce emissions from the facility during the shutdown period.

(Air Pollution Control Board; 326 IAC 1-6-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2380; errata, 11 IR 2632)

SECTION 3. 326 IAC 1-6-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 1-6-3 Preventive maintenance plans

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-17-3

Sec. 3. (a) Any person responsible for operating any facility specified in 326 IAC 1-6-1 shall prepare and maintain a preventive maintenance plan including the following information:

(1) Identification of the individual(s) responsible for inspecting, maintaining and repairing emission control devices.

(2) A description of the items or conditions that will be inspected and the inspection schedule for said items or conditions.

(3) Identification and quantification of the replacement parts which will be maintained in inventory for quick replacement.

(b) Preventive maintenance plans shall be submitted to the commissioner upon request and shall be subject to review and approval by the commissioner. As deemed necessary by the commissioner, any person operating a facility shall comply with the requirements of subsection (a). *(Air Pollution Control Board; 326 IAC 1-6-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)*

SECTION 4. 326 IAC 1-6-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 1-6-4 Conditions under which malfunction not considered violation

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-17-3

Sec. 4. (a) Facility owners or operators shall be responsible for operating and maintaining all emission control equipment and combustion or process equipment or processes in compliance with all applicable rules. Emissions temporarily exceeding the standards which are due to malfunctions of facilities or emission control equipment shall not be considered a violation of the rules provided the source demonstrates that:

(1) All reasonable measures were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the allowable limits, including the use of off-shift and over-time labor, if necessary.

(2) All possible steps were taken to minimize the impact of the excessive emissions on ambient air quality which may include but not be limited to curtailment of operation and/or shutdown of the facility.

(3) Malfunctions have not exceeded five percent (5%), as a guideline, of the normal operational time of the facility.

(4) The malfunction is not due to the negligence of the operator.

(b) No facility shall be operated unless the air pollution control device(s) and measures are also in operation simultaneously and are not bypassed, unless necessary to prevent damage to equipment or injury to persons or unless there is a malfunction and the requirements set forth in subsection (a) of this section are met.

(c) Excessive emissions shall be brought into compliance with all practicable speed, and appropriate action, including those set forth above, to correct the conditions causing such emissions to exceed applicable limits; to reduce the frequency of occurrence of such conditions, to minimize the amount by which said limits are exceeded, and to reduce the length of time for which said limits are exceeded. These actions shall be initiated as expeditiously as practicable. *(Air Pollution Control Board; 326 IAC 1-6-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)*

SECTION 5. 326 IAC 1-6-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 1-6-5 Excessive malfunctions; department actions

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-17-3

Sec. 5. The commissioner may consider the following guidance in determining cases of excessive malfunctions. Where records show that repeated malfunctions exceed five percent (5%), as a guideline, of the normal operational time for any one control device or combustion or process equipment, the commissioner may require that the maintenance program be improved or that the defective or faulty equipment or emission control device be replaced. The commissioner may require curtailment of operation of a facility if the owner or operator of the facility or emission control device cannot demonstrate that for the most recent twelve (12) month period the facility and/or the emission control device has operated in compliance with the applicable rules at least ninety-five percent (95%) of the operating time of said equipment. *(Air Pollution Control Board; 326 IAC 1-6-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2381)*

SECTION 6. 326 IAC 1-6-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 1-6-6 Malfunction emission reduction program
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-17-3

Sec. 6. Any owner or operator of a facility which has the potential to emit concentration in excess of the concentrations stated in 326 IAC 1-6-1 shall submit by January 19, 1980, or within one hundred eighty (180) days after a new source commences operation, a malfunction emission reduction program. Said program shall include, but not be limited to, the normal operating emission rate and the program proposed to reduce emissions in the event of a malfunction to an emission rate which will not contribute to the cause of the violation of the ambient air quality standards established in 326 IAC 1-3. The program shall be based on the best estimates of type and number of startups, shutdowns, and malfunctions experienced during normal operation of the facility or emission control device and the scope and duration of such conditions.

Said program may be subject to review and approval by the commissioner. *(Air Pollution Control Board; 326 IAC 1-6-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2382)*

SECTION 7. 326 IAC 4-2-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 4-2-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-15; IC 13-17

Sec. 1. This rule (326 IAC 4-2) establishes standards for the use of incinerators which emit regulated pollutants. This rule (326 IAC 4-2) does not apply to incinerators in residential units consisting of four (4) or fewer families or incinerators for which streamlined requirements have been established in accordance with 326 IAC 2-7-24. All other incinerators are subject to this rule (326 IAC 4-2). *(Air Pollution Control Board; 326 IAC 4-2-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2420; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2366)*

SECTION 8. 326 IAC 4-2-2 IS BEING AMENDED AND CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 4-2-2 Incinerators
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-17-3

Sec. 2. **(a)** All incinerators shall:

(1) consist of primary and secondary chambers or the equivalent;

(2) be equipped with a primary burner unless burning wood products;

(3) comply with 326 IAC 5-1 and 326 IAC 2;

(4) be maintained properly as specified by the manufacturer and approved by the commissioner;

(5) be operated according to the manufacturer's recommendations and only burn waste approved by the commissioner;

(6) comply with other state ~~and/or~~ **and** local rules or ordinances regarding installation and operation of incinerators;

~~(7) be operated so that emissions of hazardous material including, but not limited to, viable pathogenic bacteria, dangerous chemicals or gases, or noxious odors are prevented;~~

~~(8)~~ **(7)** not emit particulate matter in excess of:

(A) incinerators with a maximum ~~refuse-burning~~ capacity of two hundred (200) or more pounds per hour: three-tenths (0.3) ~~pounds~~ **pound** of particulate matter per one thousand (1,000) pounds of dry exhaust gas at standard conditions corrected to fifty percent (50%) excess air; or

(B) all other incinerators: five-tenths (0.5) ~~pounds~~ **pound** of particulate matter per one thousand (1,000) pounds of dry exhaust gas at standard conditions corrected to fifty percent (50%) excess air; and

~~(9)~~ **(8)** not create a nuisance or a fire hazard.

If any of the above result, the burning shall be terminated immediately.

(b) A source subject to subsection (a)(7) and the particulate matter emission limitation in:

(1) 326 IAC 11-7;
(2) 326 IAC 20;
(3) 40 CFR 60;
(4) 40 CFR 62; or
(5) 40 CFR 63*;

shall comply with the more stringent particulate matter emission limitation.

***Citations to the Code of Federal Regulations (CFR) in this section are incorporated by reference and may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 4-2-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2421; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1127)*

SECTION 9. 326 IAC 8-7-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-1 Definitions
Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 1. In addition to the definitions contained in 326 IAC 1-2 and 326 IAC 8-1-0.5, the following definitions apply throughout this rule:

(1) "Aggregate emissions of a source" means the sum of the baseline potential emissions from all the facilities at the source of the types listed in section 2(a) of this rule.

(2) "Baseline actual emissions" means the actual emissions for the baseline year.

(3) "Baseline potential emissions" means the facility's potential to emit assuming one hundred percent (100%) use of the highest VOC emitting material used in the baseline year.

(4) "Baseline year" means the year 1990 or later for which the most accurate or complete data are available and are representative of the source's normal operating conditions.

(5) "Fuel combustion facility" means a fossil fuel fired steam generating unit, process heater, or process furnace used exclusively for the purpose of producing steam by heat transfer or for heating an industrial process by heat transfer.

(6) "Industrial wastewater treatment" means the treatment of spent or used water containing dissolved or suspended matter from the following types of industries:

(A) Organic chemical, plastic, and synthetic fiber manufacturing.

(B) Pesticide manufacturing.

(C) Pharmaceutical manufacturing.

(D) Hazardous waste treatment, storage, and disposal facilities.

(Air Pollution Control Board; 326 IAC 8-7-1; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1224)

SECTION 10. 326 IAC 8-7-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-2 Applicability

Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 2. (a) This rule shall apply to stationary sources located in Lake, Porter, Clark, or Floyd County that emit or have the potential to emit volatile organic compounds (VOCs) at levels equal to or greater than twenty-five (25) tons per year (tpy) in Lake and Porter Counties and one hundred (100) tpy in Clark and Floyd Counties. This rule shall also apply to sources that have coating facilities which emit or have the potential to emit a total equal to or greater than ten (10) tpy of VOCs in Floyd, Clark, Lake, or Porter County. In determining whether the thresholds in this section are exceeded, the owner or operator of a source shall include the total potential VOC emissions from the following facilities:

(1) Facilities of the type identified by the following rules, but with actual emissions below the applicability levels of those rules:

(A) 326 IAC 8-2, concerning surface coating operations.

(B) 326 IAC 8-3, concerning organic solvent degreasing operations.

(C) 326 IAC 8-4, concerning petroleum operations.

(D) 326 IAC 8-5, concerning miscellaneous operations.

(2) Facilities of the following types:

(A) Fuel combustion facilities, including process heaters and furnaces.

(B) Wastewater treatment plants, excluding industrial wastewater treatment operations as defined in section 1(6) of this rule.

(C) Coke ovens, including byproduct ovens.

(D) Barge loading facilities.

(E) Jet engine test cells.

(F) Iron and steel production facilities.

(G) Vegetable oil processing facilities.

(3) All other facilities with potential VOC emissions, hereafter referred to as affected facilities except those covered by the rules cited in clauses (A) through (D) and those belonging to source categories listed in clauses (E) through (Q) as follows:

(A) 326 IAC 8-2.

(B) 326 IAC 8-3.

(C) 326 IAC 8-4.

(D) 326 IAC 8-5.

(E) Synthetic organic chemical manufacturing industry (SOCMI) distillation.

(F) SOCMI reactors.

(G) Offset lithography.

(H) Batch processors.

(I) Industrial wastewater treatment operations.

(J) Plastic parts coating for business machines.

(K) Plastic parts coating for automobiles.

(L) Wood furniture coating.

(M) Aerospace coating.

(N) Auto body refinishing.

(O) Ship building and ship repair.

(P) Cleanup solvents.

(Q) Volatile organic liquids storage.

(b) Facilities of the types listed in subsection (a)(1) through (a)(2) are exempt from the emission limit requirements of section 3 of this rule.

(c) Coating facilities that have aggregate potential emissions greater than ten (10) tpy and less than twenty-five (25) tpy in Lake and Porter Counties and coating facilities with aggregate potential emissions greater than forty (40) tpy and less than one hundred (100) tpy in Clark and Floyd Counties shall comply with the certification, record keeping, and reporting requirements of section 6 of this rule.

(d) Affected facilities are subject to the requirements of section 3 of this rule unless the source's actual emissions have been limited on or before May 31, 1995, to below twenty-five (25) tpy in Lake and Porter Counties and one hundred (100) tpy in Clark and Floyd Counties through federally enforceable production or capacity limitations in an operating permit. Until such time as 326 IAC 2-8 has been approved by the U.S. EPA, the operating permit will be submitted to the U.S. EPA by the department as a SIP revision. *(Air Pollution Control Board; 326 IAC 8-7-2; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1224)*

SECTION 11. 326 IAC 8-7-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-3 Emission limits

Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 3. Affected facilities must implement one (1) of the following emissions reduction measures on or before May 31, 1995:

(1) Achieve an overall VOC reduction from baseline actual emissions of at least ninety-eight percent (98%) by the documented reduction in use of VOC containing materials or install an add-on control system that achieves an overall control efficiency of ninety-eight percent (98%).

(2) Where it can be demonstrated by the source that control technology does not exist that is reasonably available and both technologically and economically feasible to achieve a ninety-eight percent (98%) reduction in VOC emissions, a source shall achieve an overall VOC reduction of at least eighty-one percent (81%) from baseline actual emissions with the documented reduction in use of VOC containing materials or install an add-on control system that achieves an overall control efficiency of eighty-one percent (81%).

(3) Achieve an alternative overall emission reduction with the application of reasonably available control technology (RACT) that has been determined as reasonably available by the U.S. EPA and the department. A petition developed in accordance with the procedures in 326 IAC 8-1-5 shall accompany the request for an alternative overall emission reduction. The petition shall be submitted to the department on or before December 31, 1994. The department may approve an extension until February 28, 1995, for submittal of the petition provided the request is received by the department prior to December 31, 1994.

(Air Pollution Control Board; 326 IAC 8-7-3; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1225)

SECTION 12. 326 IAC 8-7-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-4 Compliance methods

Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 4. (a) If compliance with section 3(1) or 3(2) of this rule is to be achieved with the application of an add-on control system or systems, the following requirements shall apply:

(1) On or before December 31, 1994, the source shall submit to the department a compliance plan containing the following information:

(A) A description of the processes that will be controlled.

(B) A description of the add-on control systems.

(C) A description of the expected control efficiency that will be achieved.

(2) A compliance test shall be performed on the add-on control systems according to the schedule and situations described in section 9(4) of this rule. The test results will be used to demonstrate compliance with the applicable emission limit and establish process and control system operating parameters.

(3) After August 31, 1995, compliance shall continue to be demonstrated by monitoring the process and control system operating parameters established in the initial compliance test unless the parameters are revised by a subsequent test. Any subsequent test and revision to process and control system operating parameters must be submitted to the department as a revision to the compliance plan and be approved by the department. A copy of the most recent compliance test shall be located at the facility and shall be made available to any department or U.S. EPA inspector upon request.

(4) Results of the compliance test required by subdivision (2) shall be submitted to the department on or before September 30, 1995, and shall contain, at a minimum, all of the following:

(A) Test methods and procedures.

(B) Overall control efficiency.

(C) Process operating parameters during the compliance test, including, but not limited to, the following:

(i) Production rate.

(ii) Temperature.

(iii) Pressure.

(iv) Moisture content of process stream.

(v) Characteristics of process materials.

(vi) Other parameters relevant to the emissions of VOC.

(b) If compliance with section 3(1) or 3(2) of this rule is to be achieved through the reduction in the use of VOC containing materials, the owner or operator shall submit a compliance plan on or before December 31, 1994.

(1) The compliance plan shall contain, at a minimum, all of the following information:

(A) The name and address of the source, and the name and telephone number of a company representative.

(B) A complete description of the baseline actual emissions.

(C) A complete description of the VOC containing materials, such as chemicals, coatings, solvents, and cleaning materials used at the facility with an identification of the VOC containing materials that will be replaced along with a complete description of the replacement materials. The owner or operator shall also include a description of the operations in which the VOC containing materials are used.

(D) A comprehensive record keeping and monitoring plan that will be used to insure and demonstrate compliance. The plan must follow the test methods and procedures as described in section 7 of this rule.

(2) The owner or operator shall also submit a copy of the approved compliance plan with the source's Part 70 permit application. The Part 70 permit application must be submitted to the department no later than six (6) months, and issued no later than twelve (12) months, from the effective date of Indiana's Part 70 permit program. The department shall incorporate the approved compliance plan into the source's Part 70 permit which shall include specific enforceable permit conditions. These permit conditions shall reflect limits, with no longer than daily averaging, on VOC content of process materials, capture and control efficiencies, or other conditions that will limit VOC emissions and demonstrate

compliance with the requirements of this rule. The permit shall also include appropriate test methods that are consistent with the methods incorporated within 326 IAC 8 *[this article]*, and sufficient monitoring record keeping and reporting requirements to assure that information is available to document continuous compliance with the VOC limits. The department will submit a copy of the compliance plan to the U.S. EPA for review. On or after May 31, 1995, the owner or operator shall operate the facility as described in the approved compliance plan unless request by the department to modify the plan as described in section 5 of this rule.

(c) If a source intends to comply with section 3(2) of this rule, it shall submit to the department on or before December 31, 1994, for review and approval, documentation demonstrating that ninety-eight percent (98%) control is not reasonably achievable taking into account availability of alternative materials, technical feasibility, cost, and any other factors considered by the source. A demonstration that ninety-eight percent (98%) control is not achieved at similar operations, if any, in other ozone nonattainment areas within the United States is an acceptable demonstration.

(d) Owners or operators who elect to comply with section 3(3) of this rule are subject to the following requirements:

(1) Compliance shall be achieved with the application of one (1) or more emission reduction systems including, but not limited to, the following:

(A) add-on controls;

(B) elimination or reduction in use of VOC containing materials; or

(C) work practices.

(2) On or before December 31, 1994, the owner or operator shall submit to the department a compliance plan containing all of the following information:

(A) The name and address of the source and the name and telephone number of a company representative.

(B) A petition for a site specific RACT control plan developed in accordance with the procedures in 326 IAC 8-1-5.

(C) Identification of all VOC emitting facilities along with the description of the purpose each facility serves.

(D) A list of the facilities that meet the applicability criteria of section 2(a) of this rule.

(E) Baseline actual emissions for each facility identified in clause (D) along with the following information:

(i) Maximum design rate, maximum production, or maximum throughput.

(ii) Identification, amount, and VOC emission factor of process materials such as coatings, chemicals, and fuels.

(iii) Baseline year.

(F) A complete description of the emission reduction measures that the source intends to implement, the percent VOC reduction to be achieved by these measures, and calculations that demonstrate that the measures will meet the projected VOC reductions described in the source's petition for site specific RACT. The compliance plan shall also describe the expected percentage of overall emission reduction from baseline actual emissions. Supporting documentation such as:

(i) a manufacturer's warranty on a control system;

(ii) the difference in the VOC emission factor of the baseline coating or process chemicals; or

(iii) an increase in transfer efficiency;

shall be included.

(G) The operation, maintenance, monitoring, and record keeping procedures that will ensure continued compliance.

(H) The expected annual VOC emission in tons per year (tpy) after applying the emission reduction systems.

(e) Owners or operators who elect to comply with this rule with the application of enforceable permit limits, in accordance with section 2(d) of this rule shall, prior to December 31, 1994, submit an application for a federally enforceable state operating permit (FESOP) in accordance with 326 IAC 2-8. Until such time as 326 IAC 2-8 has been approved by the U.S. EPA, the operating permit will be submitted to the U.S. EPA by the department as a SIP revision. The source shall include as a part of the permit application, the following information:

(1) The name and address of the source and the name and telephone number of a company representative.

(2) Identification of all VOC emitting facilities together with a description of the purpose each facility serves.

(3) A list of facilities that meet the requirements of section 2(a) of this rule.

(4) Baseline actual emissions for each facility identified in subdivision (3) along with the following information:

(A) Baseline year.

(B) Maximum design rate, maximum production, or maximum throughput.

(C) Identification, amount, and VOC emission factor of process materials such as coatings, chemicals, and fuels.

(5) Identification of facilities for which limitation on hours of operation or limitation on amount of production has been proposed along with the proposed number of hours or amount of production.

(6) The monitoring and record keeping procedures that will be used to demonstrate compliance with the limitation on hours of operation or limitations in amount of production.

(7) A signed statement providing that the proposed limitation on hours of operation or limitation on amount of production shall be fully implemented prior to or on May 31, 1995.

The monitoring and record keeping procedures that will demonstrate compliance with the limitation on hours of operation or limitations in amount of production will be incorporated into the source's operating permit.

(f) The department may approve an extension until February 28, 1995, for any compliance plan, demonstration, or application required by this section, provided the request is received by the department prior to December 31, 1994. *(Air Pollution*

Control Board; 326 IAC 8-7-4; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1225)

SECTION 13. 326 IAC 8-7-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-5 Compliance plan
Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 5. Compliance plans required by this rule must be approved by the department. The department may:

(1) Request additional information if the information contained in the compliance plan is found to be incomplete or indicates noncompliance with the rule.

(2) Request modifications in the proposed operation, maintenance, monitoring, and record keeping procedures.

(3) If the department requests modifications in the proposed operation, maintenance, monitoring, or record keeping procedures, the owner or operator shall resubmit a new compliance plan containing the modification within sixty (60) days of the initial notification.

(4) Compliance plans required by this rule must be approved by the department by November 30, 1995.

(Air Pollution Control Board; 326 IAC 8-7-5; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1227)

SECTION 14. 326 IAC 8-7-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-6 Certification, record keeping, and reporting requirements for coating facilities
Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 6. On or before December 31, 1994, or upon the startup of any new coating facility meeting the aggregate potential emissions criteria of section 2(c) of this rule, each source or facility shall submit to the department a certification that the facility is exempt from the requirements of section 3 of this rule. The certification shall contain all of the following information:

(1) The name and address of the source and the name and telephone number of the company representative.

(2) Identification of each VOC emitting facility together with a description of the purpose each facility serves.

(3) A listing of facilities which meet the requirements of section 2(a) of this rule.

(4) Baseline actual emissions for each facility identified in subdivision (3) together with the following information:

(A) Maximum design rate, maximum production, or maximum throughput.

(B) VOC emission factors with reference to the source of the emission factors and procedures as to how the emission factors were estimated, for example, the type of each fuel or process chemicals used and the baseline year used.

(5) Procedures that will be used to monitor the source's potential emissions to ensure that they remain below twenty-five (25) tpy.

(Air Pollution Control Board; 326 IAC 8-7-6; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1227)

SECTION 15. 326 IAC 8-7-7 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-7 Test methods and procedures
Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 7. The owner or operator of any source subject to this rule shall be subject to the applicable test method requirements of 326 IAC 8-1-4 and in 40 CFR 60, Appendix A*.

*Copies of the Code of Federal Regulations (CFR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections are also available from the Indiana Department of Environmental Management, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 8-7-7; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1228)*

SECTION 16. 326 IAC 8-7-8 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-8 General record keeping and reports
Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 8. In addition to complying with specific recording and reporting requirements in other sections of this rule, sources shall comply with all of the following requirements:

(1) All records required by this rule shall be maintained for at least three (3) years.

(2) Records required by this rule or records used to demonstrate that a source is exempt from the requirements of this rule shall be submitted to the department or the U.S. EPA within thirty (30) days of the receipt of a written request. If such records are not available, the source shall be considered to be subject to the emission limits contained in section 3 of this rule.

(3) Sources subject to this rule shall notify the department at least thirty (30) days prior to the addition or modification of a facility which may result in a potential increase in VOC emissions.

(Air Pollution Control Board; 326 IAC 8-7-8; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1228)

SECTION 17. 326 IAC 8-7-9 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-9 Control system operation, maintenance, and testing
Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 9. The following requirements shall apply to sources that

choose to meet the emission limit requirements of section 3 of this rule at any facility using a control device or devices:

(1) The control system shall be operated and maintained according to the manufacturer's recommendations but may be modified based on the results of the initial or subsequent compliance test or upon the written request of the department.

(2) The operating and maintenance procedures shall be followed beginning no later than May 31, 1995. A copy of the procedures shall be submitted to the department no later than September 30, 1995.

(3) A copy of the operating and maintenance procedures shall be maintained in a convenient location at the source property and as close to the control system as possible for the reference by plant personnel and department inspectors.

(4) The control system shall be tested according to the following schedule and under the following situations:

(A) An initial compliance test shall be conducted on or before August 31, 1995, and every two (2) years after the date of the initial test.

(B) A compliance test shall also be conducted whenever the owner or operator chooses to operate a control system under conditions different from those that were in place at the time of the previous test.

(C) If the owner or operator chooses to change the method of compliance with section 3 of this rule, a compliance test shall be performed within three (3) months of the change.

(D) A compliance test shall also be performed within ninety (90) days of the startup of a new facility or upon written request by the department or the U.S. EPA.

(5) All compliance tests shall be conducted according to a protocol approved by the department at least thirty (30) days before the test. The protocol shall contain, at a minimum, the following information:

(A) Test procedures.

(B) Operating and control system parameters.

(C) Type of VOC containing process material being used.

(D) The process and control system parameters which will be monitored during the test.

(Air Pollution Control Board; 326 IAC 8-7-9; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1228)

SECTION 18. 326 IAC 8-7-10 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-7-10 Control system monitoring, record keeping, and reporting

Authority: IC 13-14-8-7; IC 13-17-3-4
Affected: IC 13-14; IC 13-17-3

Sec. 10. (a) Sources that choose to meet the emission limit requirements of section 3 of this rule with the use of a control device or devices shall install, calibrate, maintain, and operate, according to the manufacturer's specification, the following monitoring equipment unless an alternative monitoring procedure has been approved by the department:

(1) If a thermal incinerator is used for VOC reduction, a temperature monitoring device capable of continuously recording the temperature of the gas stream in the combustion zone of the incinerator shall be used. The temperature monitoring device shall have an accuracy of one percent (1%) of the temperature being measured in degrees centigrade or plus or minus five-tenths degree Centigrade (± 0.5EC), whichever is greater.

(2) If a catalytic incinerator is used for VOC reduction, a temperature device capable of continuously recording the temperature in the gas stream immediately before and after the catalyst bed of the incinerator shall be used. The temperature monitoring device shall have an accuracy of one percent (1%) of the temperature being measured in degrees centigrade plus or minus five-tenths degree Centigrade (± 0.5EC), whichever is greater.

(3) If a carbon adsorber is used to remove and recover VOC from the gas stream, a VOC monitoring device capable of continuously recording the concentration level of VOC at the outlet of the carbon bed shall be used. The monitoring device shall be based on a detection principle such as infrared, photoionization, or thermal conductivity.

(4) Where a VOC recovery device other than a carbon adsorber is used, the source shall provide to the department information describing the operation of the device and the process parameters which would indicate proper operation and maintenance of the control device. The department may request further information and will specify appropriate monitoring procedures and reporting requirements.

(b) Sources subject to the requirements of this section shall maintain the following records:

(1) A log of the operating time of the facility and the facility's capture system, control device, and monitoring equipment.

(2) A maintenance log for the capture system, the control device, and the monitoring equipment detailing all routine and nonroutine maintenance performed. The log shall include the dates and duration of any outages of the capture system, the control device, or the monitoring system.

(3) The following additional records shall be maintained for facilities using thermal incinerators:

(A) Continuous records of the temperature in the gas stream in the combustion zone of the incinerator.

(B) Records of all three (3) hour periods of operation for which the average combustion temperature of the gas stream in the combustion zone was more than fifty degrees Fahrenheit (50EF) below the combustion zone temperature which existed during the most recent compliance test that demonstrated that the facility was in compliance.

(4) The following additional records shall be maintained for facilities using catalytic incinerators:

(A) Continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator.

(B) Records of all three (3) hour periods of operation for which the average temperature measured at the process vent

stream immediately before the catalyst bed is more than fifty degrees Fahrenheit (50EF) below the average temperature of the process vent stream which existed during the most recent compliance test that demonstrated that the facility was in compliance.

(C) Records of all three (3) hour periods of operation for which the average temperature difference across the catalyst bed is less than eighty percent (80%) of the temperature difference measured during the most recent compliance test that demonstrated that the facility was in compliance.

(5) The following additional records shall be maintained for facilities using carbon adsorbers:

(A) Continuous records of the VOC concentration level or reading in the exhaust stream of the carbon adsorber.

(B) Records of all three (3) hour periods of operation during which the average VOC concentration level or reading in the exhaust gas is more than twenty percent (20%) greater than the average exhaust gas concentration level or reading measured by the organic monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the facility was in compliance.

(6) Facilities using VOC recovery devices other than carbon adsorbers shall maintain the monitoring records and meet the reporting requirements specified by subsection (a)(4).

(7) Information requirements in subdivisions (3)(B), (4)(B), (4)(C), and (5)(B) shall be submitted to the department within thirty (30) days of occurrence. The following information shall accompany the submittal:

(A) The name and location of the facility.

(B) Identification of the control system where the excess emission occurred and the facility it served.

(C) The time, date, and duration of the ~~exceedence.~~ **exceedance.**

(D) Corrective action taken.

(Air Pollution Control Board; 326 IAC 8-7-10; filed Dec 22, 1994, 11:45 a.m.: 18 IR 1229)

SECTION 19. 326 IAC 8-9-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-9-1 Applicability
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 1. (a) On and after October 1, 1995, this rule applies to stationary vessels used to store volatile organic liquid (VOL) that are located in Clark, Floyd, Lake, or Porter County.

(b) Stationary vessels with a capacity of less than thirty-nine thousand (39,000) gallons are subject to the reporting and record keeping provisions of section 6(a) and 6(b) of this rule and are exempt from all other provisions of this rule.

(c) Stationary vessels with a capacity equal to or greater than thirty-nine thousand (39,000) gallons that store a VOL with a maximum true vapor pressure equal to or greater than five-tenths (0.5) pound per square inch absolute (psia) but less than seventy-five hundredths (0.75) psia are subject to the provisions of section 6(a), 6(b), 6(g), and 6(h) of this rule and are exempt from all other provisions of this rule. *(Air Pollution Control Board; 326 IAC 8-9-1; filed Dec 19, 1995, 3:10 p.m.: 19 IR 1056)*

SECTION 20. 326 IAC 8-9-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-9-2 Exemptions
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 2. This rule does not apply to the following vessels:

(1) Vessels at coke oven byproduct plants.

(2) Pressure vessels designed to operate in excess of twenty-nine and four-tenths (29.4) pounds per square inch absolute and without emissions to the atmosphere.

(3) Vessels that are permanently attached to mobile vehicles such as trucks, rail cars, barges, or ships.

(4) Vessels with a design capacity less than or equal to four hundred twenty thousand (420,000) gallons used for petroleum or condensate stored, processed, or treated prior to custody transfer.

(5) Vessels located at bulk gasoline plants.

(6) Storage vessels located at gasoline service stations.

(7) Vessels used to store beverage alcohol.

(8) Stationary vessels that are subject to any provision of 40 CFR 60*, Subpart Kb, New Source Performance Standard for Volatile Organic Liquid Storage.

*Copies of the Code of Federal Regulations (CFR) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-9-2; filed Dec 19, 1995, 3:10 p.m.: 19 IR 1056)*

SECTION 21. 326 IAC 8-9-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-9-3 Definitions
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 3. The following definitions apply throughout this rule:

(1) "Condensate" means hydrocarbon liquid separated from natural gas that condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

(2) "Custody transfer" means the transfer of produced petroleum and condensate, or both, after processing or treatment, or both, in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation.

(3) "Fill" means the introduction of VOL into a storage vessel but not necessarily to complete capacity.
(4) "Gasoline service station" means any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage vessels.
(5) "Maximum true vapor pressure" means the equilibrium partial pressure exerted by a volatile organic liquid. The maximum true vapor pressure of VOLs stored at or above the ambient temperature shall correspond to the highest calendar month average storage temperature and shall be determined as follows:
(A) Maximum true vapor pressure for VOLs stored at or above the ambient temperature shall be determined using the following procedures:
(i) For gasolines and naphtha, either of the following:
(AA) Figures 17A and 17B, American Petroleum Institute Publication 2517, Third Edition, February 1989, with addendum, May 1994*.
(BB) Figure 4.3-6, AP-42, Compilation of Air Pollutant Emission Factors, Volume I (Stationary Point and Area Sources), Fourth Edition, September 1985*.
(ii) For crude oils, either of the following:
(AA) Figures 18A and 18B, American Petroleum Institute Publication 2517, Third Edition, February 1989, with addendum, May 1994*.
(BB) Figure 4.3-5, AP-42, Compilation of Air Pollutant Emission Factors, Volume I (Stationary Point and Area Sources), Fourth Edition, September 1985*.
(iii) For VOLs, other than those in item (i) or (ii), procedures on page D-146, Vapor Pressures, Critical Temperatures, and Critical Pressures of Organic Compounds, Handbook of Chemistry and Physics, 51st Edition, 1970-1971, Chemical Rubber Company*.
(iv) Maximum true vapor pressure for VOLs stored at or above ambient temperatures shall be determined at the following temperatures:
(AA) In Lake and Porter Counties, seventy-three degrees Fahrenheit (73EF).
(BB) In Clark and Floyd Counties, seventy-seven and seven-tenths degrees Fahrenheit (77.7EF).
(B) Alternatively, the owner or operator or the department and the U.S. EPA may require measurement of vapor pressure. ASTM Method D323-92* or a method acceptable to the department and U.S. EPA shall be used. If a discrepancy exists between the results obtained from methods in clause (A) and methods used in this clause, the results in this clause shall prevail.
(6) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.
(7) "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery.
(8) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquified petroleum gases as determined by the following methods:
(A) For gasoline, only, ASTM D323-82*.
(B) For gasoline-ethanol blends, ASTM D-5190*, ASTM D-5191*, ASTM 5482*.
(9) "Vessel" means each tank, reservoir, or container used for the storage of VOLs but does not include either of the following:
(A) Frames, housing, auxiliary supports, or other components that are not directly involved in the containment of liquids or vapors.
(B) Subsurface caverns or porous rock reservoirs.
(10) "Volatile organic liquid" or "VOL" means any organic liquid that can emit volatile organic compounds (VOCs) into the atmosphere except those VOLs that emit only those compounds that the department has determined do not contribute appreciably to the formation of ozone.
(11) "Waste" means any liquid resulting from industrial, commercial, mining, or agricultural operations, or from community activities that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or recycled.

*Copies of Figures 17A and 17B, American Petroleum Institute Publication 2517, Third Edition, February 1989, with addendum, May 1994; Figure 4.3-6, AP-42, Compilation of Air Pollutant Emission Factors, Volume I (Stationary Point and Area Sources), Fourth Edition, September 1985; Figures 18A and 18B, American Petroleum Institute Publication 2517, Third Edition, February 1989, with addendum, May 1994; Figure 4.3-5, AP-42, Compilation of Air Pollutant Emission Factors, Volume I (Stationary Point and Area Sources), Fourth Edition, September 1995; Procedures on page D-146, Vapor Pressures, Critical Temperatures, and Critical Pressures of Organic Compounds, Handbook of Chemistry and Physics, 51st Edition, 1970-1971, Chemical Rubber Company; ASTM Method D323-92; ASTM D323-82; ASTM D-5190; ASTM D-191; and ASTM 5482 referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-9-3; filed Dec 19, 1995, 3:10 p.m.: 19 IR 1056; errata filed Dec 19, 1995, 3:15 p.m.: 19 IR 1141; errata, 19 IR 1372; errata filed Apr 9, 1996, 2:30 p.m.: 19 IR 2045)*

SECTION 22. 326 IAC 8-9-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-9-4 Standards
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 4. (a) The owner or operator of each vessel with a capacity greater than or equal to thirty-nine thousand (39,000) gallons, that stores VOL with a maximum true vapor pressure greater than or equal to seventy-five hundredths (0.75) pound per square inch absolute (psia) but less than eleven and one-tenth (11.1) psia shall do the following:

(1) On or before May 1, 1996, for each vessel having a permanently affixed roof, install one (1) of the following:

(A) An internal floating roof meeting the standards in subsection (c).

(B) A closed vent system and control device meeting the standards in subsection (d).

(C) An equivalent emissions control system resulting in equivalent emissions reductions to that obtained in clause (A).

(2) For each vessel having an internal floating roof, install one (1) of the following:

(A) At the time of the next scheduled cleaning, but not later than ten (10) years after May 1, 1996, an internal floating roof meeting the standards in subsection (c).

(B) On or before May 1, 1996, a closed vent system and control device meeting the standards in subsection (d).

(C) On or before May 1, 1996, an equivalent emissions control system resulting in equivalent emissions reductions to that obtained in clause (A).

(3) For each vessel having an external floating roof, install one (1) of the following:

(A) At the time of the next scheduled cleaning, but not later than ten (10) years after May 1, 1996, an external floating roof meeting the standards in subsection (e).

(B) On or before May 1, 1996, a closed vent system meeting the standards in subsection (d).

(C) On or before May 1, 1996, an equivalent emissions control system resulting in equivalent emissions reductions to that obtained in clause (A).

(4) For each vessel subject to this subsection, the owner or operator described in the report required in section 6(b) of this rule, install one (1) of the following:

(A) Emission control equipment.

(B) A schedule for vessel cleaning and installation of emission control equipment.

(b) On or before May 1, 1996, the owner or operator of each vessel with a capacity greater than or equal to thirty-nine thousand (39,000) gallons, that stores VOL with a maximum true vapor pressure greater than or equal to eleven and one-tenth (11.1) psia shall equip each vessel with a closed vent system with a control device meeting the standards of subsection (d).

(c) Standards applicable to each internal floating roof are as follows:

(1) The internal floating roof shall float on the liquid surface, but not necessarily in complete contact with it, inside a vessel that has a permanently affixed roof.

(2) The internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the vessel is completely emptied or subsequently emptied and refilled.

(3) When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(4) Each internal floating roof shall be equipped with one (1) of the following closure devices between the wall of the vessel and the edge of the internal floating roof:

(A) A foam or liquid-filled seal mounted in contact with the liquid (liquid-mounted seal).

(B) Two (2) seals mounted one (1) above the other so that each forms a continuous closure that completely covers the space between the wall of the vessel and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both must be continuous.

(C) A mechanical shoe seal that consists of a metal sheet held vertically against the wall of the vessel by springs or weighted levers and that is connected by braces to the floating roof. A flexible coated fabric, or envelope, spans the annular space between the metal sheet and the floating roof.

(5) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents shall provide a projection below the liquid surface.

(6) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains shall be equipped with a cover or lid that shall be maintained in a closed position at all times (with no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.

(7) Automatic bleeder vents shall be equipped with a gasket and shall be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(8) Rim space vents shall be equipped with a gasket and shall be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(9) Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a slit fabric cover that covers at least ninety percent (90%) of the opening.

(10) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(d) Standards applicable to each closed vent system and control device are as follows:

(1) The closed vent system shall be designed to collect all VOC vapors and gases discharged from the vessel and operated with no detectable emission as indicated by an instrument reading of less than five hundred (500) parts per million (ppm) above background and visual inspections as determined by the methods specified in 40 CFR 60, Subpart VV, 60.485(C)*.

(2) The control device shall be designed and operated to reduce inlet VOC emissions by ninety-five percent (95%) or greater. If a flare is used as the control device, it shall meet the specifications described in the general control device requirements in 40 CFR 60.18, General Provisions*.

(e) Standards applicable to each external floating roof are as follows:

(1) Each external floating roof shall be equipped with a closure device between the wall of the vessel and the roof edge. The closure device shall consist of two (2) seals, one (1) above the other. The lower seal shall be referred to as the primary seal; the upper seal shall be referred to as the secondary seal.

(2) Except as provided in section 5(c)(4) of this rule, the primary seal shall completely cover the annular space between the edge of the floating roof and vessel wall and shall be either a liquid-mounted seal or a shoe seal.

(3) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the vessel in a continuous fashion except as allowed in section 5(c)(4) of this rule.

(4) Except for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the liquid surface.

(5) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof shall be equipped with a gasketed cover, seal, or lid that shall be maintained in a closed position at all times, without visible gap, except when the device is in actual use.

(6) Automatic bleeder vents shall be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(7) Rim vents shall be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents shall be gasketed.

(8) Each emergency roof drain shall be provided with a slotted membrane fabric cover that covers at least ninety percent (90%) of the area of the opening.

(9) The roof shall be floating on the liquid at all times, for example, off the roof leg supports, except when the vessel is completely emptied and subsequently refilled. The process of filling, emptying, or refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

*Copies of 40 CFR 60, Subpart VV, 60.485(C); and 40 CFR 60.18, General Provisions referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-9-4; filed Dec 19, 1995, 3:10 p.m.: 19 IR 1057)*

SECTION 23. 326 IAC 8-9-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-9-5 Testing and procedures

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 5. (a) The owner or operator of each vessel subject to section 4(a) of this rule shall meet the requirements of subsection (b), (c), or (d).

(b) On and after May 1, 1996, except as provided in section 4(a)(2) of this rule, the owner or operator of each vessel equipped with an internal floating roof shall meet the following requirements:

(1) Visually inspect the internal floating roof, the primary seal, and the secondary seal, if one is in service, prior to filling the vessel with VOL. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the vessel.

(2) For vessels equipped with a liquid-mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal, if one is in service, through manholes and roof hatches on the fixed roof at least once every twelve (12) months after initial fill. If the internal floating roof is not resting on the surface of the VOL inside the vessel, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the vessel from service within forty-five (45) days. If a failure that is detected during inspections required in this section cannot be repaired in forty-five (45) days and if the vessel cannot be emptied within forty-five (45) days, a thirty (30) day extension may be requested from the department in the inspection report required in section 6(c)(3) of this rule. Such a request for an extension must document that alternate storage capacity is unavailable and specify a schedule of actions the company will take that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(3) For vessels equipped with both primary and secondary seals:

(A) visually inspect the vessel as specified in subdivision (4), at least every five (5) years; or

(B) visually inspect the vessel as specified in subdivision (2).

(4) Visually inspect the internal floating roof, the primary seal, the secondary seal, if one is in service, gaskets, slotted membranes, and sleeve seals each time the vessel is emptied and degassed. If the internal floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, or the gaskets no longer close off the liquid surfaces from the atmosphere, or the slotted membrane has more than ten percent (10%) open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this subdivision exist before refilling the vessel with VOL. In no event shall the inspections required by this subsection occur at intervals greater than ten (10) years in the case of vessels conducting the annual visual inspection as specified in subdivisions (2) and (3)(B) and at intervals no greater than five (5) years in the case of vessels specified in subdivision (3)(A).

(5) Notify the department in writing at least thirty (30) days

prior to the filling or refilling of each vessel for which an inspection is required by subdivisions (1) and (4) to afford the department the opportunity to have an observer present. If the inspection required by subdivision (4) is not planned and the owner or operator could not have known about the inspection thirty (30) days in advance of refilling the vessel, the owner or operator shall notify the department at least seven (7) days prior to the refilling of the vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification, including the written documentation, may be made in writing and sent by express mail so that it is received by the department at least seven (7) days prior to the refilling.

(c) On and after May 1, 1996, except as provided in section 4(a)(3) of this rule, the owner or operator of each vessel equipped with an external floating roof shall meet the following requirements:

(1) Determine the gap areas and maximum gap widths between the primary seal and the wall of the vessel and between the secondary seal and the wall of the vessel according to the following frequency:

(A) Measurements of gaps between the vessel wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the vessel or within sixty (60) days of the initial fill with VOL and at least once every five (5) years thereafter.

(B) Measurements of gaps between the vessel wall and the secondary seal shall be performed within sixty (60) days of the initial fill with VOL and at least once per year thereafter.

(C) If any source ceases to store VOL for a period of one (1) year or more, subsequent introduction of VOL into the vessel shall be considered an initial fill for purposes of this subdivision.

(2) Determine gap widths and areas in the primary and secondary seals individually by the following procedures:

(A) Measure seal gaps, if any, at one (1) or more floating roof levels when the roof is floating off the roof leg supports.

(B) Measure seal gaps around the entire circumference of the vessel in each place where a one-eighth (⅛) inch diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the vessel and measure the circumferential distance of each such location.

(C) The total surface area of each gap described in clause (B) shall be determined by using probes of various widths to measure accurately the actual distance from the vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(3) Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each by the nominal diameter of the vessel and compare each ratio to the respective standards in subdivision (4).

(4) Make necessary repairs or empty the vessel within forty-five (45) days of identification of seals not meeting the requirements listed in clauses (A) and (B) as follows:

(A) The accumulated area of gaps between the vessel wall and the mechanical shoe or liquid-mounted primary seal shall not exceed ten (10) square inches per foot of vessel diameter, and the width of any portion of any gap shall not exceed one and five-tenths (1.5) inches. There shall be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(B) The secondary seal shall meet the following requirements:

(i) The secondary seal shall be installed above the primary seal so that it completely covers the space between the roof edge and the vessel wall except as provided in subdivision (2)(C).

(ii) The accumulated area of gaps between the vessel wall and the secondary seal used in combination with a metallic shoe or liquid-mounted primary seal shall not exceed one (1) square inch per foot of vessel diameter, and the width of any portion of any gap shall not exceed five-tenths (0.5) inch. There shall be no gaps between the vessel wall and the secondary seal when used in combination with a vapor-mounted primary seal.

(iii) There shall be no holes, tears, or other openings in the seal or seal fabric.

(C) If a failure that is detected during inspections required in subdivision (1) cannot be repaired within forty-five (45) days and if the vessel cannot be emptied within forty-five (45) days, a thirty (30) day extension may be requested from the department in the inspection report required in section 6(d)(3) of this rule. Such extension request must include a demonstration of unavailability of alternate storage capacity and a specification of a schedule that will assure that the control equipment will be repaired or the vessel will be emptied as soon as possible.

(5) Notify the department thirty (30) days in advance of any gap measurements required by subdivision (1) to afford the department the opportunity to have an observer present.

(6) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed. For all visual inspections, the following requirements apply:

(A) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this clause exist before filling or refilling the vessel with VOL.

(B) The owner or operator shall notify the department in writing at least thirty (30) days prior to the filling or refilling of each vessel to afford the department the opportunity to inspect the vessel prior to the filling. If the inspection required by this subdivision is not planned and the owner or operator could not have known about the

inspection thirty (30) days in advance of refilling the vessel, the owner or operator shall notify the department at least seven (7) days prior to the refilling of the vessel. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification including the written documentation may be made in writing and sent by express mail so that it is received by the department at least seven (7) days prior to the refilling.

(d) The owner or operator of each vessel that is equipped with a closed vent system and control device described in section 4(a)(1)(B), 4(a)(2)(B), or 4(a)(3)(B) of this rule and meeting the requirements of section 4(d) of this rule, other than a flare, shall meet the following requirements:

(1) On or before January 1, 1996, submit to the department an operating plan containing the following information:

(A) Documentation demonstrating that the control device will achieve the required control efficiency during maximum loading conditions. This documentation shall include a description of the gas stream that enters the control device, including flow and VOC content under varying liquid level conditions (dynamic and static) and manufacturer's design specifications for the control device. If the control device or the closed vent capture system receives vapor gases, or liquid other than fuels from sources that are not subject to this rule, the efficiency demonstration shall include consideration of all vapors, gases, and liquids received by the closed vent capture system and control device. If an enclosed combustion device with a minimum residence time of seventy-five hundredths (0.75) second and a minimum temperature of eight hundred sixteen degrees Centigrade (816EC) is used to meet the ninety-five percent (95%) requirement, documentation that those conditions will exist is sufficient to meet the requirements of this subdivision.

(B) A description of the parameter or parameters to be monitored to ensure that the control device will be operated in conformance with its design and an explanation of the criteria used to monitor the parameter or parameters.

(2) Operate the closed vent system and control device and monitor the parameters of the closed vent system and control device in accordance with the operating plan submitted to the department in accordance with subdivision (1) unless the plan was modified by the department during the review process. In this case, the modified plan applies.

(e) The owner or operator of each source that is equipped with a closed vent system and a flare to meet the requirements in section 4(a)(4) or 4(d) of this rule shall meet the requirements specified in the general control device requirements in 40 CFR 60.18(e) and 40 CFR 60.18(f)*.

*Copies of 40 CFR 60.18(e) and 40 CFR 60.18(f) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-9-5; filed Dec 19, 1995, 3:10 p.m.: 19 IR 1059)*

SECTION 24. 326 IAC 8-9-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-9-6 Record keeping and reporting requirements

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 6. (a) The owner or operator of each vessel subject to this rule shall keep all records required by this section for three (3) years unless specified otherwise. Records required by subsection (b) shall be maintained for the life of the vessel.

(b) The owner or operator of each vessel to which section 1 of this rule applies shall maintain a record and submit to the department a report containing the following information for each vessel:

(1) The vessel identification number.

(2) The vessel dimensions.

(3) The vessel capacity.

(4) A description of the emission control equipment for each vessel described in section 4(a) and 4(b) of this rule, or a schedule for installation of emission control equipment on vessels described in section 4(a) or 4(b) of this rule with a certification that the emission control equipment meets the applicable standards.

(c) The owner or operator of each vessel equipped with a permanently affixed roof and internal floating roof shall comply with the following record keeping and reporting requirements:

(1) Keep a record of each inspection performed as required by section 5(b)(1) through 5(b)(4) of this rule. Each record shall identify the following:

(A) The vessel inspected by identification number.

(B) The date the vessel was inspected.

(C) The observed condition of each component of the control equipment, including the following:

(i) Seals.

(ii) Internal floating roof.

(iii) Fittings.

(2) If any of the conditions described in section 5(b)(2) of this rule are detected during the required annual visual inspection, a record shall be maintained and a report shall be furnished to the department within thirty (30) days of the inspection. Each report shall identify the following:

(A) The vessel by identification number.

(B) The nature of the defects.

(C) The date the vessel was emptied or the nature of and date the repair was made.

(3) After each inspection required by section 5(b)(3) of this rule that finds holes or tears in the seal or seal fabric, or

defects in the internal floating roof, or other control equipment defects listed in section 5(b)(3)(B) of this rule, a record shall be maintained and a report shall be furnished to the department within thirty (30) days of the inspection. The report shall identify the following:

(A) The vessel by identification number.

(B) The reason the vessel did not meet the specifications of section 4(a)(1)(A), 4(a)(2)(A), or 5(b) of this rule and list each repair made.

(d) The owner or operator of each vessel equipped with an external floating roof shall comply with the following record keeping and reporting requirements:

(1) Keep a record of each gap measurement performed as required by section 5(c) of this rule. Each record shall identify the vessel in which the measurement was made and shall contain the following:

(A) The date of measurement.

(B) The raw data obtained in the measurement.

(C) The calculations described in section 5(c)(2) and 5(c)(3) of this rule.

(2) Within sixty (60) days of performing the seal gap measurements required by section 5(c)(1) of this rule, furnish the department with a report that contains the following:

(A) The date of measurement.

(B) The raw data obtained in the measurement.

(C) The calculations described in section 5(c)(2) and 5(c)(3) of this rule.

(3) After each seal gap measurement that detects gaps exceeding the limitations specified in section 5(c) of this rule, submit a report to the department within thirty (30) days of the inspection. The report shall identify the vessel and contain the information specified in subdivision (2) and the date the vessel was emptied or the repairs made and date of repair.

(e) The owner or operator of each vessel equipped with a closed vent system with a control device shall comply with the following record keeping and reporting requirements:

(1) Owner or operators that equip the vessel with a control device other than a flare shall do the following:

(A) On or before January 1, 1996, submit an operating plan as required by section 4(d) of this rule.

(B) Maintain records of the following:

(i) The operating plan.

(ii) Measured values of the parameters monitored according to section 5(d)(2) of this rule.

(2) Owner or operators that equip the vessel with a closed vent system and a flare shall meet the following requirements:

(A) Keep records of all periods of operation during which the flare pilot flame is absent.

(B) Furnish the department with a report containing the measurements required by 40 CFR 60.18(f)(1) through 40 CFR 60.18(f)(5)* as required by 40 CFR 60.8. This report shall be submitted within six (6) months of the initial start-up date.

(C) Furnish the department with a semiannual report of all periods recorded under 40 CFR 60.115* in which the pilot flame was absent.

(f) The owner or operator of each vessel equipped with a closed vent system and control device meeting the standards of section 4 of this rule is exempt from the requirements of subsections (g) and (h).

(g) Except as provided in subsections (f) and (j), the owner or operator of each vessel either with a design capacity greater than or equal to thirty-nine thousand (39,000) gallons storing a VOL with a maximum true vapor pressure greater than or equal to five-tenths (0.5) pound per square inch absolute (psia) but less than seventy-five hundredths (0.75) psia shall maintain a record of the maximum true vapor pressure of the VOL stored in each vessel. The record for each vessel shall contain the following information:

(1) The type of VOL stored.

(2) The dates of the VOL storage.

(3) For each day of VOL storage, the average stored temperature for VOLs stored above or below the ambient temperature or average ambient temperature for VOLs stored at ambient temperature, and the corresponding maximum true vapor pressure.

(h) Except as provided in subsection (f), the owner or operator of each vessel with a design capacity greater than or equal to thirty-nine thousand (39,000) gallons storing a liquid with a maximum true vapor pressure that is normally less than seventy-five hundredths (0.75) psia shall maintain a record and notify the department within thirty (30) days when the maximum true vapor pressure of the liquid exceeds seventy-five hundredths (0.75) psia.

(i) Available data on the storage temperature may be used to determine the maximum true vapor pressure as follows:

(1) The maximum true vapor pressure for VOLs stored at temperatures above or below the ambient temperature shall correspond to the highest calendar-month average storage temperature. The maximum true vapor pressure for VOLs stored at the ambient temperature shall correspond to the local maximum monthly average temperature, as reported by the National Weather Service.

(2) For local crude oil or refined petroleum products, the maximum vapor pressure may be determined as follows:

(A) Available data on the Reid vapor pressure and the maximum expected storage temperature based on the highest expected calendar month average temperature of the stored product may be used to determine the maximum true vapor pressure from nomographs contained in API Bulletin 2517* unless the department specifically requests that the liquid be sampled, the actual storage temperature determined, and the Reid vapor pressure determined from the samples.

(B) The maximum true vapor pressure of each type of crude oil with a Reid vapor pressure less than two (2) pounds per square inch or with physical properties that preclude determination by the recommended method shall be determined from available data and recorded if the estimated maximum true vapor pressure is greater than five-tenths (0.5) psia.

(3) For other liquids, the maximum true vapor pressure may be determined by any of the following methods:

(A) Standard reference texts.

(B) ASTM Method D2879-92*.

(C) Calculated or measured by a method approved by the department.

(j) The owner or operator of each vessel storing a waste mixture of indeterminate or variable composition shall be subject to the following requirements:

(1) Prior to the initial filling of the vessel, the highest maximum true vapor pressure for the range of anticipated liquid compositions to be stored will be determined using the methods described in subsection (i).

(2) For vessels in which the vapor pressure of the anticipated liquid composition is above the cutoff for monitoring but below the cutoff for controls as defined in section 4(a) of this rule, tests are required as follows:

(A) An initial physical test of the vapor pressure is required.

(B) A physical test at least once every six (6) months thereafter is required using one (1) of the following methods:

(i) ASTM Method D2879-92*.

(ii) ASTM Method D323-82*.

(iii) As measured by an appropriate method as approved by the department.

*Copies of the Code of Federal Regulations (CFR), ASTM Method D2879-92, ASTM Method D2879-92, ASTM Method D323-82, and API Bulletin 2517 referenced may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-9-6; filed Dec 19, 1995, 3:10 p.m.: 19 IR 1061; errata filed Dec 19, 1995, 3:15 p.m.: 19 IR 1141; errata filed Apr 9, 1996, 2:30 p.m.: 19 IR 2045)*

SECTION 25. 326 IAC 8-11-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 1. This rule applies to any person performing wood furniture manufacturing operations in Lake, Porter, Clark, or Floyd County meeting the following criteria:

(1) The wood furniture manufacturing operations have potential emissions of volatile organic compounds (VOCs) of twenty-five (25) tons or more per year.

(2) The wood furniture manufacturing operations occur at a source classified by any of the following Standard Industrial Classification (SIC) codes:

(A) SIC code 2434: wood cabinets (kitchen, bath and vanity).

(B) SIC code 2511: wood household furniture, including tables, beds, chairs, sofas (nonupholstered).

(C) SIC code 2512: wood household furniture (upholstered).

(D) SIC code 2517: wood television, radios, phonographs, and sewing machine cabinets.

(E) SIC code 2519: household furniture, not elsewhere classified.

(F) SIC code 2521: wood office furniture.

(G) SIC code 2531: public building and related furniture.

(H) SIC code 2541: wood office and store fixtures, partitions, shelving, and lockers.

(I) SIC code 2599: furniture and fixtures and any other coated furnishings made of solid wood, wood composition, or simulated wood material not elsewhere classified.

(Air Pollution Control Board; 326 IAC 8-11-1; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1063)

SECTION 26. 326 IAC 8-11-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 2. The following definitions apply throughout this rule:

(1) "Adhesive" means any chemical substance that is applied for the purpose of bonding two (2) surfaces together other than by mechanical means.

(2) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the satisfaction of the commissioner and the U.S. EPA to, in specific cases, produce results adequate for a determination of compliance.

(3) "As-applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

(4) "Basecoat" means a coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials and is usually topcoated for protection.

(5) "Capture device" means a hood, enclosed room, floor sweep, or other means of collecting solvent emissions or other pollutants into a duct. The pollutant can be directed to a pollution control device such as an incinerator or carbon adsorber.

(6) "Capture efficiency" means the fraction of all organic vapors generated by a process that are directed to and captured by a control device.

(7) "Cleaning operations" means operations that use an organic solvent to remove coating materials from equipment used in wood furniture manufacturing operations.
(8) "Commissioner" means the commissioner of the Indiana department of environmental management, or the commissioner's duly authorized representative.
(9) "Continuous coater" means a finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater, including spraying, curtain coating, roll coating, dip coating, and flow coating.
(10) "Control device" means any equipment, including, but not limited to, incinerators, carbon adsorbers, and condensers, that reduces the quantity of a pollutant that is emitted to the air. The device may destroy or secure the pollutant for subsequent recovery.
(11) "Conventional air spray" means a spray coating method that atomizes the coating by mixing it with compressed air at an air pressure greater than ten (10) pounds per square inch (psi) (gauge) at the point of atomization. Airless and air assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air.
(12) "Day" means a period of twenty-four (24) consecutive hours beginning at midnight local time, or beginning at a time consistent with a facility's operating schedule.
(13) "Department" means the Indiana department of environmental management.
(14) "Enamel" means a coat of colored material, usually opaque, that is applied as a protective topcoat over a basecoat, primer, or a previously applied enamel coat. In some cases, another finishing material may be applied as a topcoat over the enamel.
(15) "Equipment leak" means emissions of volatile organic compounds from pumps, valves, flanges, or other equipment used to transfer or apply finishing materials or organic solvents.
(16) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the satisfaction of the commissioner and the U.S. EPA to have a consistent and quantitatively known relationship to the reference method under specific conditions.
(17) "Final touch-up and repair" means the application of finishing materials after completion of the finishing operation to cover minor imperfections.
(18) "Finishing application station" means the part of a finishing operation where the finishing material is applied, such as a spray booth.
(19) "Finishing material" means a coating other than an adhesive. For the wood furniture manufacturing industry, such materials include, but are not limited to, the following:
(A) Basecoats.
(B) Stains.
(C) Washcoats.
(D) Sealers.
(E) Topcoats.
(F) Enamels.
(20) "Finishing operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.
(21) "Incinerator" means an enclosed combustion device that thermally oxidizes volatile organic compounds to carbon monoxide (CO) and carbon dioxide (CO_2). The term does not include devices that burn municipal or hazardous waste material.
(22) "Material safety data sheet" or "MSDS" means the documentation required by the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910)* for a solvent, cleaning material, finishing material, or other material that identifies select reportable hazardous ingredients of the material, safety and health considerations, and handling procedures.
(23) "Normally closed container" means a container that is closed unless an operator is actively engaged in activities such as emptying or filling the container.
(24) "Operating parameter value" means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one (1) or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limit.
(25) "Organic solvent" means a liquid containing volatile organic compounds that is used for dissolving or dispersing constituents in a coating, adjusting the viscosity of a coating, or cleaning equipment. When used in a coating, the organic solvent evaporates during drying and does not become a part of the dried film.
(26) "Overall control efficiency" means the efficiency of a control system, calculated as the product of the capture and control device efficiencies, expressed as a percentage.
(27) "Recycled on-site" means the reuse of an organic solvent in a process other than cleaning or washoff.
(28) "Reference method" means any method of sampling and analyzing for an air pollutant that is published in 40 CFR 60, Appendix A*.
(29) "Responsible official" has the meaning given in 326 IAC 2-7-1(33).
(30) "Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Special purpose finishing materials that are used in some finishing systems to optimize aesthetics are not sealers.
(31) "Stain" means any color coat having a solids content by weight of no more than eight percent (8.0%) that is applied in single or multiple coats directly to the substrate. Stains include, but are not limited to, the following:
(A) Nongrain raising stains.
(B) Equalizer stains.
(C) Sap stains.
(D) Body stains.
(E) No-wipe stains.

(F) Penetrating stains.
(G) Toners.
(32) "Storage containers" means vessels or tanks, including mix equipment, used to hold finishing or cleaning materials.
(33) "Strippable booth coating" means a coating that:
(A) is applied to a booth wall to provide a protective film to receive overspray during finishing operations;
(B) is subsequently peeled off and disposed; and
(C) by means of clauses (A) and (B), reduces or eliminates the need to use organic solvents to clean booth walls.
(34) "Substrate" means the surface onto which coatings are applied or into which coatings are impregnated.
(35) "Topcoat" means the last film-building finishing material applied in a finishing system.
(36) "Touch-up and repair" means the application of finishing materials to cover minor imperfections.
(37) "Washcoat" means a transparent special purpose coating having a solids content by weight of twelve percent (12.0%) or less. Washcoats are applied over initial stains to protect and control color and to stiffen wood fibers to aid sanding.
(38) "Washoff operations" means those operations that use an organic solvent to remove coating from a substrate.
(39) "Waterborne coating" means a coating that contains more than five percent (5.0%) water by weight in its volatile fraction.
(40) "Wood furniture manufacturing operations" means the finishing and cleaning operations conducted at a wood furniture source.
(41) "Wood furniture source" means all of the pollutant emitting activities that belong to the same wood furniture industrial grouping, are located on one (1) or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control. The wood furniture industrial grouping includes the following standard industrial classification (SIC) codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, and 2599.
(42) "Working day" means a day, or any part of a day, in which a facility is engaged in manufacturing.

*Copies of the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (29 CFR 1910); and 40 CFR 60, Appendix A, may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are also available from the Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-11-2; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1064)*

SECTION 27. 326 IAC 8-11-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-3 Emission limits
Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 3. (a) On and after January 1, 1996, each owner or operator of a wood furniture manufacturing operation subject to this rule shall limit VOC emissions from finishing operations by doing one (1) of the following:
(1) Using topcoats with a VOC content no greater than eight-tenths (0.8) kilogram of VOC per kilogram of solids (kg VOC/kg solids) or eight-tenths (0.8) pound of VOC per pound of solids (lb VOC/lb solids), as-applied.
(2) Using a finishing system of sealers with a VOC content no greater than one and nine-tenths (1.9) kg VOC/kg solids (one and nine-tenths (1.9) lb VOC/lb solids), as-applied and topcoats with a VOC content no greater than one and eight-tenths (1.8) kg VOC/kg solids (one and eight-tenths (1.8) lb VOC/lb solids), as-applied.
(3) Using sealers and topcoats based on the following criteria, for sources using acid-cured alkyd amino vinyl sealers or acid-cured alkyd amino conversion varnish topcoats:
(A) For wood furniture manufacturing operations using acid-cured alkyd amino vinyl sealers and acid-cured alkyd amino conversion varnish topcoats, the following:
(i) The sealer shall contain no more than two and three-tenths (2.3) kg VOC/kg solids, (two and three-tenths (2.3) lb VOC/lb solids), as-applied.
(ii) The topcoat shall contain no more than two (2.0) kg VOC/kg solids, (two (2.0) lb VOC/lb solids), as-applied.
(B) For wood furniture manufacturing operations using a sealer other than an acid-cured alkyd amino vinyl sealer and acid-cured alkyd amino conversion varnish topcoats, the following:
(i) The sealer shall contain no more than one and nine-tenths (1.9) kg VOC/kg solids (one and nine-tenths (1.9) lb VOC/lb solids), as-applied.
(ii) The topcoat shall contain no more than two (2.0) kg VOC/kg solids, (two (2.0) lb VOC/lb solids), as-applied.
(C) For wood furniture manufacturing operations using an acid-cured alkyd amino vinyl sealer and a topcoat other than an acid-cured alkyd amino conversion varnish topcoat, the following:
(i) The sealer shall contain no more than two and three-tenths (2.3) kg VOC/kg solids (two and three-tenths (2.3) lb VOC/lb solids), as-applied.
(ii) The topcoat shall contain no more than one and eight-tenths (1.8) kg VOC/kg solids (one and nine-tenths (1.8) *[sic.]* lb VOC/lb solids), as-applied.
(4) Using finishing materials such that actual emissions are less than or equal to allowable emissions using one (1) of the following averaging equations:
Equation 1:

$$0.9\ (\Sigma_{i=16N}(0.8)(TC_i)) \$ \Sigma_{i=16N}\ ER_{TCi}\ (TC_i)$$

Equation 2:

$$0.9\ (\Sigma_{i=16N}(1.8)(TC_i) + (1.9)(SE_i) + (9.0)(WC_i) + (1.2)(BC_i) + (0.791)\ (ST_i)) \$ \Sigma_{i=16N}\ ER_{TCi}(TC_i) + ER_{SEi}(SE_i) + ER_{WCi}(WC_i) + ER_{BCi}(BC_i) + ER_{STi}(ST_i)$$

Where: N = number of finishing materials participating in averaging.
TC_i = kilograms of solids of topcoat "i" used.
SE_i = kilograms of solids of sealer "i" used.
WC_i = kilograms of solids of washcoat "i" used.
BC_i = kilograms of solids of basecoat "i" used.
ST_i = liters of stain "i" used.
ER_{TCi} = VOC content of topcoat "i" in kg VOC/kg solids, as-applied.
ER_{SEi} = VOC content of sealer "i" in kg VOC/kg solids, as-applied.
ER_{WCi} = VOC content of washcoat "i" in kg VOC/kg solids, as-applied.
ER_{BCi} = VOC content of basecoat "i" in kg VOC/kg solids, as-applied.
ER_{STi} = VOC content of stain "i" in kg VOC/liter (kg/l), as-applied.

(5) Using a control system that will achieve an equivalent reduction in emissions as the requirements of subdivision (1), (2), or (3), as calculated using the compliance provisions in section 6(a)(2) of this rule, as appropriate.

(6) Using a combination of the methods presented in this subsection.

(b) On and after January 1, 1996, each owner or operator of a wood furniture manufacturing operation subject to this rule shall limit VOC emissions from cleaning operations when using a strippable booth coating. A strippable booth coating shall contain no more than eight-tenths (0.8) kg VOC/kg solids (eight-tenths (0.8) lb VOC/lb solids), as-applied. *(Air Pollution Control Board; 326 IAC 8-11-3; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1066)*

SECTION 28. 326 IAC 8-11-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-4 Work practice standards

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 4. (a) On and after July 23, 1995, the owner or operator of a source or facility subject to this rule shall implement housekeeping practices that include the following:

(1) All equipment shall be maintained according to the manufacturer's specifications.

(2) All fresh or used solvent shall be stored in closed containers.

(3) All organic solvents used for line cleaning shall be pumped or drained into a closed container.

(4) Finishing materials and cleaning materials shall be stored in closed containers.

(b) On and after July 23, 1995, emissions from washoff operations shall be controlled by the following:

(1) Using closed tanks for washoff.

(2) Minimizing dripping by tilting or rotating the part to drain as much organic solvent as possible.

(c) On and after July 23, 1995, conventional air spray guns shall not be used for applying finishing materials except under the following circumstances:

(1) To apply finishing materials that have a VOC content no greater than one (1.0) kilogram of VOC per kilogram of solids (kg VOC/kg solids) (one (1.0) pound of VOC per pound of solid (lb VOC/lb solids)), as-applied.

(2) For final touch-up and repair under one (1) of the following circumstances:

(A) The finishing materials are applied after completion of the finishing operation.

(B) The finishing materials are applied after the stain and before any other type of finishing material is applied, and the finishing materials are applied from a container that has a volume of no more than two (2) gallons.

(3) If spray is automated, that is, the spray gun is aimed and triggered automatically, not manually.

(4) If emissions from the finishing application station are directed to a control device.

(5) The conventional air gun is used to apply finishing materials and the cumulative total usage of that finishing material is less than five percent (5.0%) of the total number of gallons of finishing material used during that semiannual reporting period.

(6) The conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. Technical or economic infeasibility shall be demonstrated by submitting to the department a videotape, a technical report, or other documentation that supports the claim of technical or economic infeasibility. The following criteria shall be used, either independently or in combination, to support the claim of technical or economic infeasibility:

(A) The production speed is too high or the part shape is too complex for one (1) operator to coat the part, and the application station is not large enough to accommodate an additional operator.

(B) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

(d) On and after May 1, 1996, the owner or operator of a wood furniture manufacturing operation subject to this rule shall ensure that spray guns are cleaned in an enclosed device that does the following:

(1) Minimizes solvent evaporation during cleaning, rinsing, and draining operations.

(2) Recirculates solvents during the cleaning operation so that the solvent is reused.

(3) Collects solvent so that it is available for proper disposal or recycling.

(e) On and after July 23, 1995, the owner or operator of a wood furniture manufacturing operation subject to this rule shall not use organic solvents containing more than eight percent (8.0%) by weight of VOC for cleaning spray booth

components other than conveyors, continuous coaters and their enclosures, or metal filters, unless the spray booth is being refurbished. If the spray booth is being refurbished, that is, the spray booth coating or other material used to cover the booth is being replaced, no more than one (1.0) gallon of organic solvent shall be used to clean the booth.

(f) On and after May 1, 1996, the owner or operator of a wood furniture manufacturing operation shall implement a written training program for all new and existing personnel, including contract personnel, involved in the implementation of this rule and shall provide initial and thereafter annual training. Records of training programs shall be kept on-site with the continuous compliance plan (CCP) for a minimum of three (3) years. Documentation of the training program shall include, at a minimum, the following:

(1) A list of all personnel who are required to be trained by name and job description.

(2) An outline of the topics to be addressed in the initial and annual training program for each person, or group of personnel. Topics to be addressed shall include, at a minimum, the following:

(A) Applicable application techniques.

(B) Applicable cleaning procedures.

(C) Applicable equipment setup and adjustment to minimize finishing material usage and overspray.

(D) Appropriate management of clean-up wastes.

(3) Documentation of successful training completion for personnel involved in implementing this rule shall include the following:

(A) A listing of topics addressed at the initial or annual training. At a minimum, topics addressed shall include those listed in subdivision (2).

(B) A hands-on demonstration of the following:

(i) Correct coating application techniques.

(ii) Correct cleaning procedures.

(iii) Correct equipment setup and adjustment to minimize coating usage and overspray.

(iv) Appropriate management of clean-up wastes.

(g) On and after May 1, 1996, each owner or operator of a wood furniture manufacturing operation subject to this rule shall implement a written leak inspection and maintenance plan that specifies the following:

(1) A minimum visual inspection frequency of once per month for all equipment used to transfer or apply finishing materials or organic solvents.

(2) An inspection schedule.

(3) Methods for documenting the date and results of each inspection and any repairs that were made.

(4) The time frame between identifying a leak and making the repair that adheres to the following schedule:

(A) A first attempt at repair (such as tightening of packing glands) shall be made no later than five (5) working days after the leak is detected.

(B) Final repairs shall be made within fifteen (15) working days, unless the leaking equipment is to be replaced by a new purchase, in which case repairs shall be completed within three (3) months.

(h) On and after May 1, 1996, an organic solvent accounting form shall be maintained to record the following:

(1) The quantity and type of organic solvent used each month for washoff and cleaning.

(2) The number of pieces washed off, and the reason for the washoff.

(3) The quantity of spent organic solvent generated from each activity, and the quantity that is recycled on-site or disposed off-site each month.

(Air Pollution Control Board; 326 IAC 8-11-4; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1066; errata filed Apr 9, 1996, 2:30 p.m.: 19 IR 2045)

SECTION 29. 326 IAC 8-11-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-5 Continuous compliance plan

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 5. (a) On or before May 1, 1996, each owner or operator of a source or facility subject to this rule shall submit to the department a continuous compliance plan (CCP). The CCP shall address, at a minimum, the topics addressed in section 4 of this rule.

(b) The CCP shall include a statement signed by a responsible official certifying that the wood furniture manufacturing operation is in compliance with the following:

(1) The emission limits of section 3 of this rule.

(2) The work practice standards of section 4 of this rule.

(c) A copy of the CCP shall be maintained on-site and shall be available for inspection by the department upon request.

(d) If the department determines that the CCP does not adequately address each of the topics specified in subsection (a), the department shall require the owner or operator of the wood furniture manufacturing operation to modify the CCP.

(Air Pollution Control Board; 326 IAC 8-11-5; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1068)

SECTION 30. 326 IAC 8-11-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-6 Compliance procedures and monitoring requirements

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 6. (a) The owner or operator of a wood furniture manufacturing operation subject to the emission limits in

section 3 of this rule shall demonstrate compliance with the provisions of section 3 of this rule by using any of the following methods:

(1) To support that each sealer, topcoat, and strippable booth coating meets the requirements of section 3(a)(1) through 3(a)(3) or 3(b) of this rule, maintain documentation that uses EPA Method 24* data, or data from an equivalent or alternative method, to determine the VOC and solids content of the as-supplied finishing material. If solvent or other VOC is added to the finishing material before application, the wood furniture manufacturing operation shall maintain documentation showing the VOC content of the finishing material as-applied, in kilograms of VOC per kilogram of solids (kg VOC/kg solids).

(2) To comply through the use of a control system as described in section 3(a)(5) of this rule the following are required:

(A) Determine the overall control efficiency needed to demonstrate compliance using Equation 3:

Equation 3:

$$O = ((V - E)/V)(100)$$

Where: O = overall control efficiency of the capture system and control device as percentage.

V = actual VOC content of the finishing system material or, if multiple finishing materials are used, the daily weighted average VOC content of all finishing materials, as-applied to the substrate in pounds of VOC per pound of solids (lbs VOC/lb solids).

E = equivalent VOC emission limits in lbs VOC/lb solids.

(B) Document that the value of V in Equation 3 is obtained from the VOC and solids content of the as-applied finishing material.

(C) Calculate the overall efficiency of the capture system and control device, using the procedures in section 7 of this rule, and demonstrate that the value of the overall control efficiency thus estimated is equal to or greater than the value of O calculated by Equation 3.

(b) Initial compliance shall be demonstrated as follows:

(1) Owners or operators of a wood furniture manufacturing operation subject to the provisions of section 3(a)(1) through 3(a)(3) or 3(b) of this rule that are complying through the procedures established in subsection (a)(1) shall submit an initial compliance status report, as required by sections 5 and 9 of this rule, stating that compliant sealers and topcoats and strippable booth coatings are being used by the wood furniture manufacturing operations.

(2) Owners or operators of a wood furniture manufacturing operation subject to the provisions of section 3(a)(1) through 3(a)(3) or 3(b) of this rule that are complying through the procedures established in subsection (a)(1) and are applying sealers and topcoats using continuous coaters shall demonstrate initial compliance by either of the following:

(A) Submitting an initial compliance status report stating that compliant sealers and topcoats, as determined by the VOC content of the finishing material in the reservoir and the VOC content as calculated from records, are being used.

(B) Submitting an initial compliance status report stating that compliant sealers or topcoats, as determined by the VOC content of the finishing material in the reservoir, are being used and the viscosity of the finishing material in the reservoir is being monitored. The wood furniture manufacturing operation shall also provide data that demonstrates the correlation between the viscosity of the finishing material and the VOC content of the finishing material in the reservoir.

(3) Owners or operators of a wood furniture manufacturing operation using a control system or capture or control device to comply with the requirements of this rule, as allowed by section 3(a)(5) of this rule and subsection (a)(2) shall demonstrate initial compliance by doing the following:

(A) On or before January 1, 1996, conducting an initial compliance test using the procedures and test methods listed in section 7 of this rule.

(B) On or before January 1, 1996, calculating the overall control efficiency.

(C) On or before January 1, 1996, determining those operating conditions critical to determining compliance and establishing operating parameters that will ensure compliance with the standards as follows:

(i) For compliance with a thermal incinerator, minimum combustion temperature shall be the operating parameter.

(ii) For compliance with a catalytic incinerator equipped with a fixed catalyst bed, the minimum gas temperature both upstream and downstream of the catalyst bed shall be the operating parameter.

(iii) For compliance with a catalytic incinerator equipped with a fluidized catalyst bed, the minimum gas temperature upstream of the catalyst bed and the pressure drop across the catalyst bed shall be the operating parameters.

(iv) For compliance with a carbon adsorber, the operating parameters shall be either the total regeneration mass stream flow for each regeneration cycle and the carbon bed temperature after each regeneration, or the concentration level of organic compounds exiting the adsorber, unless the owner or operator requests and receives approval from the commissioner to establish other operating parameters.

(v) For compliance with a control device not listed in this rule, the owner or operator shall submit to the department a description of the control device, test data, verifying the performance of the device, and appropriate operating values that will be monitored to demonstrate continuous compliance with the standard. Compliance using this device is subject to the commissioner's approval.

(D) Owners or operators complying with this subdivision

shall calculate the site-specific operating parameter value as the arithmetic average of the maximum or minimum operating parameter values, as appropriate, that demonstrate compliance with the standards, during the initial compliance test required in subsection (c)(3)(A)(iv).

(E) On or before May 1, 1996, submitting a monitoring plan that identifies the operating parameter to be monitored for the capture device and discusses why the parameter is appropriate for demonstrating ongoing compliance.

(4) Owners or operators of a wood furniture manufacturing operation subject to the continuous compliance plan (CCP) in section 5 of this rule shall submit an initial compliance status report, as required by section 9(b) of this rule, stating that the CCP has been developed and procedures have been established for implementing the provisions of the plan.

(c) Continuous compliance shall be demonstrated as follows:

(1) Owners or operators of a wood furniture manufacturing operation subject to the provisions of section 3 of this rule that are complying through the procedures established in subsection (a)(1) shall demonstrate continuous compliance by using compliant materials, maintaining records that demonstrate the finishing materials are compliant, and submitting a compliance certification with the semiannual report required by section 9(c) of this rule. The compliance certification requirements shall be as follows:

(A) State that compliant sealers and topcoats and strippable booth coatings have been used each day in the semiannual reporting period, or should otherwise identify the days of noncompliance and the reasons for noncompliance. A wood furniture manufacturing operation is in violation of the standard whenever a noncompliant material, as determined by records or by a sample of the finishing material, is used. Use of a noncompliant material is a separate violation for each day the noncompliant material is used.

(B) The compliance certification shall be signed by a responsible official.

(2) Owners or operators of a wood furniture manufacturing operation subject to the provisions of section 3 of this rule that are complying through the procedures established in subsection (a)(1) and are applying sealers and topcoats using continuous coaters shall demonstrate continuous compliance by use of the following procedures:

(A) Using compliant materials, as determined by the VOC content of the finishing material in the reservoir and the VOC content as calculated from records, and submitting a compliance certification with the semiannual report required by section 9(c) of this rule. The compliance certificate requirements shall be as follows:

(i) State that compliant sealers and topcoats have been used each day in the semiannual reporting period, or should otherwise identify the days of noncompliance and the reasons for noncompliance. A wood furniture manufacturing operation is in violation of the standard whenever a noncompliant material, as determined by records or by a sample of the finishing material, is used. Use of a noncompliant material is a separate violation for each day the noncompliant material is used.

(ii) The compliance certification shall be signed by a responsible official.

(B) Using compliant materials, as determined by the VOC content of the finishing material in the reservoir, maintaining a viscosity of the finishing material in the reservoir that is no less than the viscosity of the initial finishing material by monitoring the viscosity with a viscosity meter or by testing the viscosity of the initial finishing material and retesting the material in the reservoir each time solvent is added, maintaining records of solvent additions, and submitting a compliance certification with the semiannual report required by section 9(c) of this rule. The compliance certification requirements shall be as follows:

(i) State that compliant sealers and topcoats, as determined by the VOC content of the finishing material in the reservoir, have been used each day in the semiannual reporting period. Additionally, the certification shall state that the viscosity of the finishing material in the reservoir has not been less than the viscosity of the initial finishing material, that is, the material that is initially mixed and placed in the reservoir, for any day in the semiannual reporting period.

(ii) The compliance certification shall be signed by a responsible official.

(iii) A wood furniture manufacturing operation is in violation of the standard when a sample of the as-applied finishing material exceeds the applicable limit established in section 3(a)(1) through 3(a)(3) of this rule, as determined using EPA Method 24*, or an equivalent or alternative method, or the viscosity of the finishing material in the reservoir is less than the viscosity of the initial finishing material.

(3) Owners or operators of a wood furniture manufacturing operation subject to the provisions of section 3 of this rule that are complying through the use of a control system or a capture or control device shall demonstrate continuous compliance by complying with the control system operation, maintenance, and testing, and control system monitoring, record keeping, and reporting requirements as follows:

(A) For sources choosing to meet the emission limit requirements of section 3(a)(5) of this rule at any facility using a control device or devices, the following requirements apply:

(i) The control system shall be operated and maintained according to the manufacturer's recommendations but may be modified based upon the results of the initial or subsequent compliance test or upon the written request of the department.

(ii) The operating and maintenance procedures shall be followed beginning no later than January 1, 1996. A copy of the procedures shall be submitted to the department no later than May 1, 1996.

(iii) A copy of the operating and maintenance procedures shall be maintained in a convenient location at the source property and as close to the control system as possible for the reference of plant personnel and department inspectors.

(iv) The control system shall be tested according to the following schedule and under the following situations:

(AA) An initial compliance test shall be conducted on or before January 1, 1996, and every two (2) years after the date of the initial test.

(BB) A compliance test shall also be conducted whenever the owner or operator chooses to operate a control system under conditions different from those that were in place at the time of the previous compliance test.

(CC) If the owner or operator chooses to change the method of compliance with section 3 of this rule, a compliance test shall be performed within three (3) months of the change.

(DD) A compliance test shall also be performed within ninety (90) days of the receipt of a written request from the department or the U.S. EPA.

(EE) All compliance tests shall be conducted according to a protocol approved by the department at least thirty (30) days before the test. The protocol shall contain, at a minimum, the following information:

(aa) Test procedures.

(bb) Operating and control system parameters.

(cc) Type of VOC containing process material being used.

(dd) The process and control system parameters that will be monitored during the test.

(B) Control system monitoring, record keeping, and reporting requirements are as follows:

(i) Sources that choose to meet the emission limit requirements of section 3 of this rule with the use of a control device or devices shall install, calibrate, maintain, and operate, according to the manufacturer's specification, the following monitoring equipment unless an alternative monitoring procedure has been approved by the commissioner:

(AA) If a thermal incinerator is used for VOC reduction, a temperature monitoring device capable of continuously recording the temperature of the gas stream in the combustion zone of the incinerator shall be used. The temperature monitoring device shall have an accuracy of one percent (1%) of the temperature being measured in degrees centigrade or plus or minus five-tenths degree Centigrade (0.5EC), whichever is greater.

(BB) If a catalytic incinerator is used for VOC reduction, a temperature device capable of continuously recording the temperature in the gas stream immediately before and after the catalyst bed of the incinerator shall be used. The temperature monitoring device shall have an accuracy of one percent (1%) of the temperature being measured in degrees centigrade plus or minus five-tenths degree Centigrade (0.5EC), whichever is greater.

(CC) If a carbon adsorber is used to remove and recover VOC from the gas stream, a VOC monitoring device capable of continuously recording the concentration level of VOC at the outlet of the carbon bed shall be used. The monitoring device shall be based on a detection principle such as infrared, photoionization, or thermal conductivity.

(DD) Where a VOC recovery device other than a carbon adsorber is used, the source shall provide to the department information describing the operation of the device and the process parameters that would indicate proper operation and maintenance of the control device. The department may request further information and will specify appropriate monitoring procedures and reporting requirements.

(ii) Sources subject to the requirements of this rule shall maintain the following records:

(AA) A log of the operating time of the facility, the facility's capture system, control device, and monitoring equipment.

(BB) A maintenance log for the capture system, the control device, and the monitoring equipment detailing all routine and nonroutine maintenance performed. The log shall include the dates and duration of any outages of the capture system, the control device, or the monitoring system.

(CC) The following additional records shall be maintained for facilities using thermal incinerators:

(aa) Continuous records of the temperature in the gas stream in the combustion zone of the incinerator.

(bb) Records of all three (3) hour periods of operation for which the average combustion temperature of the gas stream in the combustion zone was more than fifty degrees Fahrenheit (50EF) below the combustion zone temperature that existed during the most recent compliance test that demonstrated that the facility was in compliance.

(DD) The following additional records shall be maintained for facilities using catalytic incinerators:

(aa) Continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator.

(bb) Records of all three (3) hour periods of operation for which the average temperature measured at the process vent stream immediately before the catalyst bed is more than fifty degrees Fahrenheit (50EF) below the average temperature of the process vent stream that existed during the most recent compliance test that demonstrated that the facility was in compliance.

(cc) Records of all three (3) hour periods of operation for which the average temperature difference across the catalyst bed is less than eighty percent

(80%) of the temperature difference measured during the most recent compliance test that demonstrated that the facility was in compliance.

(EE) The following additional records shall be maintained for facilities using carbon adsorbers:

(aa) Continuous records of the VOC concentration level or reading in the exhaust stream of the carbon adsorber.

(bb) Records of all three (3) hour periods of operation during which the average VOC concentration level or reading in the exhaust gas is more than twenty percent (20%) greater than the average exhaust gas concentration level or reading measured by the organic monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the facility was in compliance.

(FF) Facilities using VOC recovery devices other than carbon adsorbers shall maintain the monitoring records and meet the reporting requirements specified by item (i)(DD).

(GG) Information requirements in subitems (BB), (CC)(bb), (DD)(bb), (DD)(cc), and (EE)(bb) shall be submitted to the department within thirty (30) days of occurrence. The following information shall accompany the submittal:

(aa) The name and location of the facility.

(bb) Identification of the control system where the excess emission occurred and the facility it served.

(cc) The time, date, and duration of the exceedance.

(dd) Corrective action taken.

(4) Owners or operators of a wood furniture manufacturing operation subject to the CCP in section 5 of this rule shall demonstrate continuous compliance by following the provisions of the CCP and submitting a compliance certification with the semiannual report required by section 9(c) of this rule. The compliance certification requirements shall be as follows:

(A) State that the CCP is being followed, or shall otherwise identify the periods of noncompliance with the work practice standards. Each failure to implement an obligation under the plan during any particular day is a separate violation.

(B) The compliance certification shall be signed by a responsible official.

*Copies of EPA Method 24 may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are also available from the Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-11-6; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1068; errata filed Apr 9, 1996, 2:30 p.m.: 19 IR 2045)*

SECTION 31. 326 IAC 8-11-7 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-7 Test procedures

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 7. (a) Compliance with the emission limits in section 3 of this rule shall be determined by the procedures and methods contained in 326 IAC 8-1-4 and 40 CFR 60, Appendix A*. The owner or operator of the wood furniture manufacturing operation may request approval from the department and the U.S. EPA to use an equivalent or alternative method.

(b) If it is demonstrated to the satisfaction of the department and the U.S. EPA that a finishing material does not release VOC byproducts during the cure, for example, all VOC is solvent, then batch formulation information shall be accepted. In the event of any inconsistency between an EPA Method 24* test and a facility's formulation data, that is, if the EPA Method 24* value is higher, the EPA Method 24* shall govern.

(c) Owners or operators complying with the provision of this rule through use of a control system shall demonstrate initial compliance by demonstrating the overall control efficiency determined by using procedures in 326 IAC 8-1-4 and 40 CFR 60*, Appendix A, is at least equal to the required overall control efficiency determined by using the equation in section 6(a)(2)(A) of this rule.

(d) All tests required in this section shall be conducted according to protocol developed in consultation with the department.

*Copies of 40 CFR 60, Appendix A may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections of the referenced materials are also available from the Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204-2220. *(Air Pollution Control Board; 326 IAC 8-11-7; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1072)*

SECTION 32. 326 IAC 8-11-8 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-8 Record keeping requirements

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 8. (a) The owner or operator of a wood furniture manufacturing operation subject to the emission limits in section 3 of this rule shall maintain records of the following:

(1) A list of each finishing material and strippable booth coating subject to the emission limits in section 3 of this rule.

(2) The VOC and solids content, as-applied, of each finishing material and strippable booth coating subject to the emission

limits in section 3 of this rule, and copies of data sheets documenting how the as-applied values were determined.

(b) The owner or operator of a wood furniture manufacturing operation following the compliance procedures of section 6(c)(2) of this rule shall maintain the records required by subsection (a) and daily records of the following:

(1) Solvent and finishing material additions to the continuous coater reservoir.

(2) Viscosity measurements.

(c) The owner or operator of a wood furniture manufacturing operation following the compliance method of section 6(a)(2) of this rule in addition to complying with the record keeping requirement of section 6(c)(3)(B) of this rule shall maintain the following records:

(1) Copies of the calculations to support the equivalency of using a control system, as well as the data that are necessary to support the calculation of the required overall control efficiency and actual determined control efficiency.

(2) Records of the daily average value of each continuously monitored parameter for each operating day. If all recorded values for a monitored parameter are within the range established during the initial performance test, the owner or operator may record that all values were within the range rather than calculating and recording an average for that day.

(d) The owner or operator of a wood furniture manufacturing operation subject to the work practice standards in section 4 of this rule shall maintain on-site the continuous compliance plan (CCP) and all records associated with fulfilling the requirements of that plan, including, but not limited to, the following:

(1) Records demonstrating compliance with the operator training program.

(2) Records maintained in accordance with the leak inspection and maintenance plan.

(3) Records associated with the cleaning solvent accounting system.

(4) Records associated with the limitation on the use of conventional air spray guns showing total finishing material usage and the percentage of finishing materials applied with conventional air spray guns for each semiannual reporting period.

(5) Records showing the VOC content of solvent used for cleaning booth components, except for solvent used to clean conveyors, continuous coaters and their enclosures, or metal filters.

(6) Copies of logs and other documentation developed to demonstrate that the other provisions of the CCP are followed.

(e) In addition to the records required by subsection (a), the owner or operator of a wood furniture manufacturing operation shall maintain a copy of the compliance certifications submitted in accordance with section 9(c) of this rule for each semiannual period following the compliance date.

(f) The owner or operator of a wood furniture manufacturing operation source shall maintain a copy of all other information submitted with the initial report required by section 9(b) of this rule and the semiannual reports required by section 9(c) of this rule.

(g) The owner or operator of a wood furniture manufacturing operation shall maintain all records for a minimum of three (3) years.

(h) Failure to maintain the records required by this section shall constitute a violation of the rule for each day records are not maintained. *(Air Pollution Control Board; 326 IAC 8-11-8; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1072)*

SECTION 33. 326 IAC 8-11-9 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-9 Reporting requirements

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 9. (a) The owner or operator of a wood furniture manufacturing operation using a control system to fulfill the requirements of this rule is subject to the reporting requirements of section 6(c)(3)(B)(ii)(GG) of this rule.

(b) On or before May 1, 1996, the owner or operator of a wood furniture manufacturing operation shall submit to the department the following:

(1) The continuous compliance plan required by section 5 of this rule.

(2) The initial compliance report for sources using add-on controls as required by section 6(b)(3) of this rule.

(c) The owner or operator of a wood furniture manufacturing operation subject to this rule and demonstrating compliance in accordance with section 6(a)(1) or 6(a)(2) of this rule shall submit a semiannual report covering the previous six (6) months of wood furniture manufacturing operations according to the following schedule:

(1) The first report shall be submitted thirty (30) calendar days after the end of the first six (6) month period following the compliance date.

(2) Subsequent reports shall be submitted within thirty (30) calendar days after the end of each six (6) month period following the first report.

(3) Each semiannual report shall include the information required by section 6(c) of this rule, a statement of whether the wood furniture manufacturing operation was in compliance or noncompliance, and, if the wood furniture manufacturing operation was not in compliance, the measures taken to bring the wood furniture manufacturing operation source into compliance.

(Air Pollution Control Board; 326 IAC 8-11-9; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1073)

SECTION 34. 326 IAC 8-11-10 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 8-11-10 Provisions for sources electing to use emissions averaging

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12

Sec. 10. (a) The owner or operator of the wood furniture manufacturing operation electing to comply with the emissions standards in section 3(a)(4) of this rule shall submit to the department for approval a plan addressing the following provisions:

(1) Program goals and rationale as follows:

(A) Provide a summary of the reasons why the wood furniture manufacturing operation would like to comply with the emission limitation through the procedures established in section 3(a)(4) of this rule.

(B) Provide a summary of how averaging can be used to meet the emission limitation.

(C) Document that the additional environmental benefit requirement is being met through the use of the equations in section 3(a)(4) of this rule. These equations ensure that the wood furniture manufacturing operation achieves an additional ten percent (10%) reduction in emissions when compared to wood furniture manufacturing operations using a compliant coatings approach to meet the requirements of the rule.

(2) Program scope as follows:

(A) Include the types of finishing materials that will be included in the wood furniture manufacturing operations' averaging program.

(B) Stains, basecoats, washcoats, sealers, and topcoats may be used in the averaging program.

(C) Finishing materials that are applied using continuous coaters may only be used in an averaging program if the wood furniture manufacturing operation can determine the amount of finishing material used each day.

(3) For program baseline, each finishing material included in the averaging program shall be the lower of the actual or allowable emission rate as of the effective date of this rule.

(4) Quantification procedures as follows:

(A) Describe how emissions and changes in emissions will be quantified, including methods for quantifying usage of each finishing material. Quantification procedures for VOC content are included in section 7 of this rule.

(B) Quantification methods used shall be accurate enough to ensure that the wood furniture manufacturing operations' actual emissions are less than the allowable emissions, as calculated using Equation 1 or 2 in section 3(a)(4) of this rule, on a daily basis.

(5) Monitoring, record keeping, and reporting as follows:

(A) Provide a summary of the monitoring, record keeping, and reporting procedures that will be used to demonstrate daily compliance with the equations presented in section 3(a)(4) of this rule.

(B) Monitoring, record keeping, and reporting procedures shall be structured in such a way that the department and facility owners can determine a wood furniture manufacturing operations' compliance status for any day.

(b) Pending approval by the department and the U.S. EPA of the proposed emissions averaging plan, the owner or operator shall continue to comply with the provisions of this rule. *(Air Pollution Control Board; 326 IAC 8-11-10; filed Dec 5, 1995, 8:30 a.m.: 19 IR 1073)*

SECTION 35. 326 IAC 9-1-1 IS BEING AMENDED AND CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 9-1-1 Applicability of rule

Authority: IC 13-14-8; IC 13-17-3-4
Affected: IC 13-12-3-1; IC 13-14-8-3; IC 13-14-8-4; IC 13-17-1

Sec. 1. This rule ~~(326 IAC 9-1)~~ is applicable to all stationary sources of carbon monoxide (CO) emissions commencing operation after March 21, 1972, **and for which emission limits have been established in section 2 of this rule.** *(Air Pollution Control Board; 326 IAC 9-1-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2547)*

SECTION 36. 326 IAC 9-1-2 IS BEING AMENDED AND CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 9-1-2 Carbon monoxide emission limits

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-3-12
Affected: IC 13-15; IC 13-17

Sec. 2. ~~Emission~~ **Emissions** of carbon monoxide shall be limited to the following unless alternative limitations and requirements have been established in a Part 70 permit in accordance with 326 IAC 2-7-24, **or unless specific carbon monoxide emission limits have been established in 326 IAC 11, 326 IAC 20, 326 IAC 60*, 40 CFR 62*, or 40 CFR 63*:**

(1) Petroleum refining emissions. No person shall cause or allow the discharge of carbon monoxide from any catalyst regeneration of a petroleum cracking system or from any petroleum fluid coker into the atmosphere unless the waste gas stream is burned in a direct-flame afterburner or boiler **that maintains a minimum temperature of one thousand three hundred (1,300) degrees Fahrenheit for a minimum retention time of three-tenths (0.3) second** or is controlled by other means approved by the commissioner.

(2) Ferrous metal smelters. No person shall cause or allow the discharge of carbon monoxide from any grey iron cupola, blast furnace, basic oxygen steel furnace, or other ferrous metal smelting equipment, having a capacity of ten (10) tons per hour or more process weight unless the waste gas stream is burned in a direct-flame afterburner or boiler **that maintains a minimum temperature of one thousand three hundred (1,300) degrees Fahrenheit for a minimum retention time of three-tenths (0.3) second** or is controlled

by other means approved by the commissioner. In instances where carbon monoxide destruction is not required, carbon monoxide emissions shall be released at such elevation that the maximum ground level concentration from a single source shall not exceed twenty percent (20%) of the maximum one (1) hour Indiana ambient air quality value for carbon monoxide.

(3) ~~Refuse~~ **Solid waste** incineration and burning equipment. No person shall ~~cause or allow the discharge of carbon monoxide from refuse incineration~~ **operate an incinerator** or burning equipment **that burns solid waste, as defined in 329 IAC 11-2-39,** unless the waste gas stream is burned in a direct-flame afterburner **that maintains a minimum temperature of one thousand three hundred (1,300) degrees Fahrenheit for a minimum retention time of three-tenths (0.3) seconds** or ~~is~~ **carbon monoxide emissions are** controlled by other means approved by the commissioner.

***Citations to the Code of Federal Regulations (CFR) in this section are incorporated by reference and may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.** *(Air Pollution Control Board; 326 IAC 9-1-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2547; filed Apr 22, 1997, 2:00 p.m.: 20 IR 2370)*

SECTION 37. 326 IAC 18-2-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-1 Applicability

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 1. This rule applies to persons who provide an approved initial training course or an approved refresher training course for the purpose of licensing persons under 326 IAC 18-1. Those training providers currently holding a valid Indiana letter of approval, per discipline, shall be considered approved per discipline under this rule until the expiration date as stated on each letter of approval. *(Air Pollution Control Board; 326 IAC 18-2-1; filed Sep 23, 1988, 1:45 a.m.: 12 IR 273; filed May 12, 1998, 9:15 a.m.: 21 IR 3756)*

SECTION 38. 326 IAC 18-2-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-2 Definitions

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 2. The following definitions apply throughout this rule:

(1) "Approved initial training course" means a course approved by the department under this rule, for purposes of providing initial training to persons to become licensed.

(2) "Approved refresher training course" means a course approved by the department under this rule, for purposes of providing refresher training to licensed persons.

(3) "Asbestos" means the asbestiform varieties of the following:
(A) Chrysotile (serpentine).
(B) Crocidolite (riebeckite).
(C) Amosite (cummingtonite-grunerite).
(D) Anthophyllite.
(E) Tremolite.
(F) Actinolite.

(4) "Asbestos-containing material" or "ACM" means asbestos or any material containing more than one percent (1%) asbestos as determined using methods specified in 40 CFR 763, Subpart E, Appendix E, Section I, Polarized Light Microscopy* including Category I and Category II ACM and all friable material.

(5) "Asbestos removal project" means any and all activities at a facility involving the removal, encapsulation, enclosure, abatement, renovation, repair, removal, storage, stripping, dislodging, cutting, or drilling that results in the disturbance or repair of the following:
(A) At least three (3) linear feet of RACM on or off pipes.
(B) At least three (3) square feet of RACM on or off other facility components.
(C) A total of at least seventy-five hundredths (0.75) cubic foot of RACM on or off all facility components.

These activities include, but are not limited to, work area preparation, implementation of engineering controls and work practices, and work area decontamination activities required by 326 IAC 14-10-4 or 29 CFR 1926.1101* (Occupational Safety and Health Administration Occupational Exposure to Asbestos).

(6) "Day", for purposes of determining duration of approved training courses, means eight (8) hours including breaks and lunch.

(7) "Facility" means any:
(A) school building;
(B) institutional, commercial, public, or industrial, building, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four (4) or fewer dwelling units);
(C) ship; and
(D) active or inactive waste disposal site.

For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to 326 IAC 14 is included, regardless of its current use or function.

(8) "Facility component" means any part of a facility, including equipment.

(9) "Friable", when referring to material at a facility, means that the material, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces

reasonably expected to act on the material and includes previously nonfriable material after such nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure or mechanical forces reasonably expected to act on the material.

(10) "Hands-on training", when referring to a topic covered by a training course, means training which gives students actual experience performing tasks associated with the accredited discipline as follows:

(A) For asbestos contractors, supervisors, workers, and disposal managers, the inclusion of the following:

(i) Working with asbestos-substitute material.

(ii) Fitting and using respirators.

(iii) Use of glove bags.

(iv) Donning protective clothing.

(v) Constructing a decontamination unit.

(vi) Other related abatement work activities.

(B) For asbestos inspectors, the inclusion of the following:

(i) Simulated building walk-through inspection.

(ii) Respirator fit testing.

(11) "Licensed", when referring to a person, means a person holding a current asbestos license issued by the department under 326 IAC 18-1 in the following disciplines:

(A) Inspector.

(B) Management planner.

(C) Project designer.

(D) Asbestos supervisor.

(E) Asbestos worker.

(F) Asbestos contractor.

(G) Waste disposal manager.

(12) "Management plan" means a document prepared under the Asbestos-Containing Materials in Schools Rule that addresses the manner in which ACM will be handled in a school building.

(13) "Nonfriable", when referring to material at a facility, means material which, when dry, may not be crumbled, pulverized, or reduced to powder by either hand pressure or mechanical forces reasonably expected to act on the material.

(14) "Person" has the meaning set forth in IC 13-11-2-158(a).

(15) "Regulated asbestos-containing material" or "RACM" means the following:

(A) Friable asbestos material.

(B) Category I nonfriable ACM that has become friable.

(C) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, abrading, or burning.

(D) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this article.

The term does not include nonfriable asbestos-containing resilient floor covering materials unless the materials are sanded, beadblasted, or mechanically pulverized so that visible asbestos emissions are discharged or the materials are burned. Resilient floor covering materials include sheet vinyl flooring, resilient tile, or associated adhesives.

(16) "School" means any combination of grades kindergarten, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

(17) "School building" means any of the following:

(A) A structure at a school suitable for use as a classroom, laboratory, library, school eating facility, or facility used for the preparation of food.

(B) A gymnasium or other facility at a school that is specially designed for athletic or recreational activities for an academic course in physical education.

(C) Another facility used by a school for the instruction or housing of students or for the administration of educational or research programs.

(D) A maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in clauses (A) through (C).

(E) A portico or covered exterior hallway or walkway that is part of a school.

(F) An exterior portion of a mechanical system used to heat, ventilate, or air condition (HVAC) the interior space of a school.

(18) "Training course provider" means a person who provides an approved initial training course or an approved refresher training course for the purpose of licensing persons under 326 IAC 18-1.

(19) "TSCA Title II" refers to 15 U.S.C. 2641 et seq. of the federal Toxic Substances Control Act as amended on October 22, 1986 **.

*Copies of the Code of Federal Regulations may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204.

**Copies of TSCA Title II may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies of pertinent sections are also available for copying at the Indiana Department of Environmental Management, Indiana Government Center-North, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 18-2-2; filed Sep 23, 1988, 1:45 a.m.: 12 IR 273; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2114; filed May 12, 1998, 9:15 a.m.: 21 IR 3756)*

SECTION 39. 326 IAC 18-2-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-3 Initial training course requirements

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 3. (a) In order to qualify for approval, an asbestos

inspector training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) An asbestos inspector training course shall be at least three (3) days in duration and shall include lectures, demonstrations, four (4) hours of hands-on training, individual respirator fit testing, and a course review. Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos inspector training course shall adequately address the following topics:

(A) Background information on asbestos to include the following:

(i) The identification of asbestos and examples and discussion of the uses and locations of asbestos in buildings.

(ii) The physical appearance of asbestos.

(B) Potential health effects related to asbestos exposure to include the following:

(i) The nature of asbestos-related diseases.

(ii) Routes of exposure.

(iii) Dose-response relationships and the lack of a safe exposure level.

(iv) The synergistic effect between cigarette smoking and asbestos exposure.

(v) The latency period for asbestos-related diseases.

(vi) A discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(C) Functions, qualifications, and role of inspectors to include the following:

(i) Discussion of prior experience and qualifications for inspectors and management planners.

(ii) Discussion of the functions of an accredited inspector as compared to those of an accredited management planner.

(iii) Discussion of the inspection process, including inventory of ACM and physical assessment.

(D) Legal liabilities and defenses to include the following:

(i) Responsibilities of the inspector and management planner.

(ii) A discussion of comprehensive general liability policies, claims-made and occurrence policies, environmental and pollution liability policy clauses.

(iii) State liability insurance requirements.

(iv) Bonding and the relationship of insurance availability to bond availability.

(E) Understanding building systems to include the following:

(i) The interrelationship between building systems, including an overview of common building physical plan layout.

(ii) Heat, ventilation, and air conditioning (HVAC) system types, physical organization, and where asbestos is found on HVAC components.

(iii) Building mechanical systems, their types and organization, and where to look for asbestos on such systems.

(iv) Inspecting electrical systems, including appropriate safety precautions.

(v) Reading blueprints and as-built drawings.

(F) Public, employee, or building occupant relations to include the following:

(i) Notification of employee organizations about the inspection.

(ii) Signs to warn building occupants.

(iii) Tact in dealing with occupants and the press.

(iv) Scheduling of inspections to minimize disruption.

(v) Education of building occupants about actions being taken.

(G) Preinspection planning and review of previous inspection records to include the following:

(i) Scheduling the inspection and obtaining access.

(ii) Building record review.

(iii) Identification of probable homogeneous areas from blueprints or as-built drawings.

(iv) Consultation with maintenance or building personnel.

(v) Review of previous inspection, sampling, and abatement records of a building.

(vi) The role of the inspector in exclusions for previously performed inspections.

(H) Inspecting for friable and nonfriable ACM and assessing the condition of friable ACM to include the following:

(i) Procedures to follow in conducting visual inspections for friable and nonfriable ACM.

(ii) Types of building materials that may contain asbestos.

(iii) Touching materials to determine friability.

(iv) Open return air plenums and their importance in HVAC systems.

(v) Assessing damage, significant damage, potential damage, and potential significant damage.

(vi) Amount of suspected ACM, both in total quantity and as a percentage of the total area.

(vii) Type of damage.

(viii) Accessibility.

(ix) Material's potential for disturbance.

(x) Known or suspected causes of damage or significant damage.

(xi) Deterioration as assessment factors.

(I) Bulk sampling or documentation of asbestos in schools to include the following:

(i) Detailed discussion of the "Simplified Sampling Scheme for Friable Surfacing Materials (U.S. EPA 560/5-85-030a October 1985)*".

(ii) Techniques to ensure sampling in a randomly distributed manner for other than friable surfacing materials.

(iii) Sampling of nonfriable materials.

(iv) Techniques for bulk sampling.

(v) Sampling equipment the inspector should use.

(vi) Patching or repair of damage done in sampling.

(vii) An inspector's repair kit.

(viii) Discussion of polarized light microscopy.

(ix) Choosing an accredited laboratory to analyze bulk samples.

(x) Quality control and quality assurance procedures.

(J) Inspector respiratory protection and personal protective equipment to include the following:

(i) Classes and characteristics of respirator types.

(ii) Limitations of respirators.

(iii) Proper selection, inspection, donning, use, maintenance, and storage procedures for respirators.

(iv) Methods for field testing of the facepiece-to-mouth seal (positive and negative pressure fitting tests).

(v) Qualitative and quantitative fit testing procedures.

(vi) Variability between field and laboratory protection factors.

(vii) Factors that alter respirator fit, for example, facial hair.

(viii) The components of a proper respiratory protection program.

(ix) Selection and use of personal protective clothing.

(x) Use, storage, and handling of nondisposable clothing.

(K) Record keeping and writing the inspection report to include the following:

(i) Labeling of samples and keying sample identification to sampling location.

(ii) Recommendations on sample labeling.

(iii) Detailing of ACM inventory.

(iv) Photographs of selected sampling areas and examples of ACM condition.

(v) Information required for inclusion in the management plan by Section 203(i)(1) TSCA Title II.

(L) Regulatory review to include the following:

(i) National Emission Standards for Hazardous Air Pollutants (NESHAP) found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.

(ii) U.S. EPA worker protection rule found at 40 CFR 763, Subpart G*.

(iii) TSCA Title II.

(iv) Occupational Safety and Health Administration (OSHA) asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration Occupational Exposure to Asbestos).

(v) OSHA respirator requirements found at 29 CFR 1910.134*.

(vi) The friable ACM in schools rule found at 40 CFR 763, Subpart E*.

(vii) Applicable state and local regulations and differences in federal or state requirements where they apply and the effects, if any, on public and nonpublic schools or commercial or public buildings.

(viii) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, 329 IAC 10-8-4 *[329 IAC 10-8 was repealed filed Jan 9, 1998, 9:00 a.m.: 21 IR 1733. See 329 IAC 10-8.1.]*, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(M) Field trip comprised of a walk-through inspection to include the following:

(i) On-site discussion on information gathering and determination of sampling locations.

(ii) On-site practice in physical assessment.

(iii) Classroom discussion of field exercise.

(N) A course review of the key aspects of the training course.

(b) In order to qualify for approval, an asbestos management planner training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) Verify that each attendee possesses a current and valid inspector training certificate prior to admission to the management planner training course.

(2) An asbestos management planner training course shall be at least two (2) days in duration and shall include lectures, demonstrations, and a course review. Audiovisual materials shall be used to complement lectures where appropriate.

(3) An asbestos management planner training course shall adequately address the following topics:

(A) Course overview to include the following:

(i) The role of the management planner.

(ii) Operations and maintenance programs.

(iii) Setting work priorities.

(iv) Protection of building occupants.

(B) Evaluation and interpretation of survey results to include the following:

(i) Review of TSCA Title II* requirements for inspection and management plans as given in Section 203(i)(1) of TSCA Title II*.

(ii) Interpretation of field data and laboratory results.

(iii) Comparison between field inspector's data sheet with laboratory results and site survey.

(C) Hazard assessment to include the following:

(i) Amplification of the difference between physical assessment and hazard assessment.

(ii) The role of the management planner in hazard assessment.

(iii) Explanation of significant damage, damage, potential damage, and potential significant damage.

(iv) Use of a description (or decision tree) code for assessment of ACM.

(v) Assessment of friable ACM.

(vi) Relationship of accessibility, vibration sources, use of adjoining space, and air plenums and other factors to hazard assessment.

(D) Legal implications to include the following:

(i) Liability.

(ii) Insurance issues specific to planners.

(iii) Liabilities associated with interim control measures and in-house maintenance, repair, and removal.

(iv) Use of results from previously performed inspections.

(E) Evaluation and selection of control options to include the following:

(i) Overview of encapsulation, enclosure, interim operations and maintenance, and removal.
(ii) Advantages and disadvantages of each method.
(iii) Response actions described via a decision tree or other appropriate method.
(iv) Work practices for each asbestos project.
(v) Staging and prioritizing of work in both vacant and occupied buildings.
(vi) The need for containment barriers and decontamination in asbestos projects.

(F) Role of other professionals to include the following:
(i) Use of industrial hygienists, engineers, and architects in developing technical specifications for asbestos projects.
(ii) Any requirements that may exist for architect sign-off of plans.
(iii) Team approach to design of high quality job specifications.

(G) Developing an operations and maintenance plan to include the following:
(i) Purpose of the plan.
(ii) Discussion of applicable U.S. EPA guidance documents.
(iii) What actions should be taken by custodial staff.
(iv) Proper cleaning procedures.
(v) Steam cleaning and high efficiency particulate aerosol (HEPA) vacuuming.
(vi) Reducing disturbance of ACM.
(vii) Scheduling operations and maintenance for off-hours.
(viii) Rescheduling or canceling renovation in areas with ACM.
(ix) Boiler room maintenance.
(x) Disposal of ACM.
(xi) In-house procedures for ACM-bridging and penetrating encapsulants.
(xii) Pipe fittings.
(xiii) Metal sleeves.
(xiv) Polyvinyl chloride (PVC), canvas, and wet wraps.
(xv) Muslin with straps.
(xvi) Fiber mesh cloth.
(xvii) Mineral wool and insulating cement.
(xviii) Discussion of employee protection programs and staff training.
(xix) Case study in developing an operations and maintenance plan (development, implementation process, and problems that have been experienced).

(H) Regulatory review to include the following:
(i) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).
(ii) The NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(iii) U.S. EPA worker protection rule found at 40 CFR 763, Subpart G*.
(iv) TSCA Title II*.
(v) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, 329 IAC 10-8-4 *[329 IAC 10-8 was repealed filed Jan 9, 1998, 9:00 a.m.: 21 IR 1733. See 329 IAC 10-8.1.]*, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(I) Record keeping for the management planner to include the following:
(i) Use of field inspector's data sheet along with laboratory results.
(ii) Ongoing record keeping as a means to track asbestos disturbance.
(iii) Procedures for record keeping.

(J) Assembling and submitting the management plan to include the following:
(i) Plan requirements in TSCA Title II, Section 203(i)(1).
(ii) The management plan as a planning tool.

(K) Financing abatement action to include the following:
(i) Economic analysis and cost estimates.
(ii) Development of cost estimates.
(iii) Present costs of abatement versus future operations and maintenance costs.
(iv) Grants and loans under the Asbestos School Hazard Abatement Act (20 U.S.C. 4011 et seq.)*.

(L) A course review of the key aspects of the training course.

(c) In order to qualify for approval, an asbestos project designer training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) An asbestos project designer training course shall be at least three (3) days in duration and shall include lectures, demonstrations, a field trip, and a course review. Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos project designer training course shall adequately address the following topics:

(A) Background information on asbestos to include the following:
(i) Identification of asbestos.
(ii) Examples and discussion of the uses and locations of asbestos in buildings.
(iii) Physical appearance of asbestos.

(B) Potential health effects related to asbestos exposure to include the following:
(i) Nature of asbestos-related diseases.
(ii) Routes of exposure.
(iii) Dose-response relationships and the lack of a safe exposure level.
(iv) The synergistic effect between cigarette smoking and asbestos exposure.
(v) The latency period of asbestos-related diseases.
(vi) A discussion of the relationship between asbestos exposure and asbestosis, lung cancer, mesothelioma, and cancer of other organs.

(C) Overview of abatement construction projects to include the following:
(i) Abatement as a portion of a renovation project.
(ii) OSHA requirements for notification of other contractors on a multiemployer site 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos.
(D) Safety system design specifications to include the following:
(i) Design, construction, and maintenance of containment barriers and decontamination enclosure systems.
(ii) Positioning of warning signs.
(iii) Electrical and ventilation system lock-out.
(iv) Proper working techniques for minimizing fiber release.
(v) Entry and exit procedures for the work area.
(vi) Use of wet methods.
(vii) Use of negative pressure exhaust ventilation equipment.
(viii) Use of HEPA vacuums.
(ix) Proper cleanup and disposal of asbestos.
(x) Work practices as they apply to encapsulation, enclosure, and repair.
(xi) Use of glove bags and a demonstration of glove bag use.
(xii) Proper techniques for initial cleaning.
(E) Field trip comprised of a visit to an abatement site or other suitable building site, including on-site discussions of abatement design, and building walk-through inspection, including discussion of rationale for the concept of functional spaces during the walk-through.
(F) Employee personal protective equipment to include the following:
(i) Classes and characteristics of respirator types.
(ii) Limitations of respirators.
(iii) Proper selection, inspection, donning, use, maintenance, and storage procedures.
(iv) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
(v) Qualitative and quantitative fit testing procedures.
(vi) Variability between field and laboratory protection factors.
(vii) Factors that alter respirator fit, for example, facial hair.
(viii) Components of a proper respiratory protection program.
(ix) Selection and use of personal protective clothing.
(x) Use, storage, and handling of nondisposable clothing.
(G) Additional safety hazards encountered during abatement activities and how to deal with them, including the following:
(i) Electrical hazards.
(ii) Heat stress.
(iii) Air contaminants other than asbestos.
(iv) Fire and explosion hazards.
(H) Fiber aerodynamics and control to include the following:
(i) Aerodynamic characteristics of asbestos fibers.
(ii) Importance of proper containment barriers.
(iii) Settling time for asbestos fibers.
(iv) Wet methods in abatement.
(v) Aggressive air monitoring following abatement.
(vi) Aggressive air movement and negative pressure exhaust ventilation as a clean-up method.
(I) Designing abatement solutions to include the following:
(i) Discussions of removal, enclosure, and encapsulation methods.
(ii) Asbestos waste disposal.
(J) Final clearance process to include the following:
(i) Discussion of the need for a written sampling rationale for aggressive final air clearance.
(ii) Requirements of a complete visual inspection.
(iii) The relationship of the visual inspection to final air clearance.
(K) Budgeting and cost estimation to include the following:
(i) Development of cost estimates.
(ii) Present cost of abatement versus future operations and maintenance costs.
(iii) Setting priorities for abatement jobs to reduce costs.
(L) Writing abatement specifications to include the following:
(i) Preparation of and need for a written project design.
(ii) Means and methods specifications versus performance specifications.
(iii) Design of abatement in occupied buildings.
(iv) Modification of guide specifications to a particular building.
(v) Worker and building occupant health and medical considerations.
(vi) Replacement of ACM with nonasbestos substitutes.
(M) Preparing abatement drawings to include the following:
(i) Significance and need for drawings.
(ii) Use of as-built drawings.
(iii) Use of inspection photographs and on-site reports.
(iv) Methods of preparing abatement drawings.
(v) Diagramming containment barriers.
(vi) Relationship of drawings to design specifications.
(vii) Particular problems in abatement drawings.
(N) Contract preparation and administration.
(O) Legal liabilities and defenses to include the following:
(i) Insurance considerations.
(ii) Bonding.
(iii) Hold harmless clauses.
(iv) Use of abatement contractor's liability insurance.
(v) Claims-made versus occurrence policies.
(P) Replacement of asbestos with asbestos-free substitutes.
(Q) Role of other consultants to include the following:
(i) Development of technical specification sections by industrial hygienists or engineers.
(ii) The multidisciplinary team approach to abatement design.
(R) Occupied buildings to include the following:
(i) Special design procedures required in occupied buildings.
(ii) Education of occupants.
(iii) Extra monitoring recommendations.

(iv) Staging of work to minimize occupant exposure.
(v) Scheduling of renovation to minimize exposure.

(S) Relevant federal, state, and local regulatory requirements with a discussion of procedures and standards, including, but not limited to, the following:
(i) Requirements of TSCA Title II*.
(ii) The NESHAP, found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.
(iv) EPA worker protection rule found at 40 CFR 763, Subpart G*.
(v) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).
(vi) OSHA hazard communication standard found at 29 CFR 1926.59*.
(vii) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, 329 IAC 10-8-4 *[329 IAC 10-8 was repealed filed Jan 9, 1998, 9:00 a.m.: 21 IR 1733. See 329 IAC 10-8.1.]*, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.

(T) A course review of the key aspects of the training course.

(d) In order to qualify for approval, an asbestos project supervisor or contractor training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) An asbestos project supervisor or contractor training course shall be at least five (5) days in duration and shall include lectures, demonstrations, at least fourteen (14) hours of hands-on training, individual respirator fit testing, and a course review. Audiovisual materials shall be used to complement lectures where appropriate.

(2) An asbestos project supervisor or contractor training course shall adequately address the following topics:

(A) Physical characteristics of asbestos and ACM to include the following:
(i) Identification of asbestos.
(ii) Aerodynamic characteristics.
(iii) Typical uses.
(iv) Physical appearance.
(v) A review of hazard assessment considerations.
(vi) A summary of abatement control options.

(B) Potential health effects related to asbestos exposure to include the following:
(i) Nature of asbestos-related diseases.
(ii) Routes of exposure.
(iii) Dose-response relationships and the lack of a safe exposure level.
(iv) Synergism between cigarette smoking and asbestos exposure.
(v) Latency period for diseases.

(C) Employee personal protective equipment to include the following:
(i) Classes and characteristics of respirator types.
(ii) Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
(iii) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
(iv) Qualitative and quantitative fit testing procedures.
(v) Variability between field and laboratory protection factors.
(vi) Factors that alter respirator fit, for example, facial hair.
(vii) The components of a proper respiratory protection program.
(viii) Selection and use of personal protective clothing.
(ix) Use, storage, and handling of nondisposable clothing.
(x) Regulations covering personal protective equipment.

(D) State-of-the-art work practices to include the following:
(i) Proper work practices for asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
(ii) Positioning of warning signs.
(iii) Electrical and ventilation system lock-out.
(iv) Proper working techniques for minimizing fiber release.
(v) Use of wet methods.
(vi) Use of negative pressure exhaust ventilation equipment.
(vii) Use of HEPA vacuums.
(viii) Proper clean-up and disposal procedures.
(ix) Work practices for removal, encapsulation, enclosure, and repair of ACM.
(x) Emergency procedures for unplanned releases.
(xi) Potential exposure situations.
(xii) Transport and disposal procedures.
(xiii) Recommended and prohibited work practices.
(xiv) New abatement-related techniques and methodologies.

(E) Personal hygiene to include the following:
(i) Entry and exit procedures for the work area.
(ii) Use of showers.
(iii) Avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
(iv) Potential exposures, such as family exposure, shall also be included.

(F) Hazards encountered during abatement activities and how to deal with them, including the following:
(i) Electrical hazards.
(ii) Heat stress.
(iii) Air contaminants other than asbestos.
(iv) Fire and explosion hazards.
(v) Scaffold and ladder hazards.
(vi) Slips, trips, and falls.
(vii) Confined spaces.

(G) Medical monitoring to include the following:

(i) OSHA requirements for a pulmonary function test.
(ii) Chest x-ray and a medical history for each employee.
(H) Air monitoring procedures to determine airborne concentrations of asbestos fibers to include the following:
(i) A description of aggressive sampling.
(ii) Sampling equipment and methods.
(iii) Reasons for air monitoring.
(iv) Types of samples.
(v) Interpretation of results, specifically from analyses performed by polarized light, phase-contrast, and electron microscopy.
(I) Relevant federal, state, and local regulatory requirements with a discussion of procedures and standards to include the following:
(i) Requirements of TSCA Title II*.
(ii) NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.
(iv) OSHA asbestos construction standard found at 29 CFR 1926.1101* (Occupational Safety and Health Administration, Occupational Exposure to Asbestos).
(v) EPA worker protection rule found at 40 CFR 763, Subpart G*.
(vi) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, 329 IAC 10-8-4 *[329 IAC 10-8 was repealed filed Jan 9, 1998, 9:00 a.m.: 21 IR 1733. See 329 IAC 10-8.1.]*, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.
(J) Respiratory protection programs and medical surveillance programs.
(K) Insurance and liability issues to include the following:
(i) Contractor issues.
(ii) Workers' compensation coverage and exclusions.
(iii) Third-party liabilities and defenses.
(iv) Insurance coverage and exclusions.
(L) Record keeping for asbestos abatement projects to include the following:
(i) Records required by federal, state, and local regulations.
(ii) Records recommended for legal and insurance purposes.
(M) Supervisory techniques for asbestos abatement activities to include supervisory practices which enforce and reinforce the required work practices and discourage unsafe work practices.
(N) Contract specifications to include a discussion of key elements that are included in contract specifications.
(O) A course review of the key aspects of the training course.

(e) In order to qualify for approval, an asbestos worker training course shall include a written examination as outlined in section 5 of this rule and meet the following requirements:

(1) An asbestos worker training course shall be at least four (4) days in duration and shall include lectures, demonstrations, at least fourteen (14) hours of hands-on training, individual respirator fit testing, and a course review. Audiovisual materials shall be used to complement lectures where appropriate.
(2) An asbestos worker training course shall adequately address the following topics:
(A) Physical characteristics of asbestos to include the following:
(i) Identification of asbestos.
(ii) Aerodynamic characteristics.
(iii) Typical uses.
(iv) Physical appearance.
(v) A summary of abatement control options.
(B) Potential health effects related to asbestos exposure to include the following:
(i) Nature of asbestos-related diseases.
(ii) Routes of exposure.
(iii) Dose-response relationships and the lack of a safe exposure level.
(iv) Synergism between cigarette smoking and asbestos exposure.
(v) Latency period for diseases.
(vi) Discussion of the relationship of asbestos exposure to asbestosis, lung cancer, mesothelioma, and cancer of other organs.
(C) Employee personal protective equipment to include the following:
(i) Classes and characteristics of respirator types.
(ii) Limitations of respirators and their proper selection, inspection, donning, use, maintenance, and storage procedures.
(iii) Methods for field testing of the facepiece-to-face seal (positive and negative pressure fitting tests).
(iv) Qualitative and quantitative fit testing procedures.
(v) Variability between field and laboratory protection factors.
(vi) Factors that alter respirator fit, for example, facial hair.
(vii) The components of a proper respiratory protection program.
(viii) Selection and use of personal protective clothing, use, storage, and handling of nondisposable clothing.
(ix) Regulations covering personal protective equipment.
(D) State-of-the-art work practices to include the following:
(i) Proper asbestos abatement activities, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems.
(ii) Positioning of warning signs.
(iii) Electrical and ventilation system lock-out.
(iv) Proper working techniques for minimizing fiber release.
(v) Use of wet methods.
(vi) Use of negative pressure ventilation equipment.

(vii) Use of HEPA vacuums.
(viii) Proper clean-up and disposal procedures.
(ix) Work practices for removal, encapsulation, enclosure, and repair.
(x) Emergency procedures for sudden releases.
(xi) Potential exposure situations.
(xii) Transport and disposal procedures.
(xiii) Recommended and prohibited work practices.
(E) Personal hygiene to include the following:
(i) Entry and exit procedures for the work area.
(ii) Use of showers.
(iii) Avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area.
(iv) Potential exposures, such as family exposure.
(F) Hazards encountered during abatement activities and how to deal with them, including the following:
(i) Electrical hazards.
(ii) Heat stress.
(iii) Air contaminants other than asbestos.
(iv) Fire and explosion hazards.
(v) Scaffold and ladder hazards.
(vi) Slips, trips, and falls.
(vii) Confined spaces.
(G) Medical monitoring to include the following:
(i) OSHA and U.S. EPA requirements for a pulmonary function test.
(ii) Chest x-rays and a medical history for each employee.
(H) Air monitoring to include procedures to determine airborne concentrations of asbestos fibers, focusing on how personal air sampling is performed and the reasons for it.
(I) Relevant federal, state, and local regulatory requirements, procedures, and standards with particular attention directed at relevant U.S. EPA, OSHA, and state regulations concerning asbestos abatement workers with a discussion of procedures and standards to include the following:
(i) Requirements of TSCA Title II**.
(ii) NESHAP found at 40 CFR 61, Subparts A (General Provisions) and M (National Emission Standard for Asbestos)*.
(iii) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection found at 29 CFR 1910.134*.
(iv) OSHA asbestos construction standard found at 29 CFR 1926.1101*.
(v) EPA worker protection rule found at 40 CFR 763, Subpart G*.
(vi) 326 IAC 14-2, 326 IAC 14-10, this article, 329 IAC 10-4-2, 329 IAC 10-8-4 *[329 IAC 10-8 was repealed filed Jan 9, 1998, 9:00 a.m.: 21 IR 1733. See 329 IAC 10-8.1.]*, and any local or municipal regulations, ordinances, or other local laws pertaining to asbestos.
(J) Establishment of respiratory protection programs.
(K) A course review of the key aspects of the training course.

*These materials have been incorporated by reference and are available at the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Indianapolis, Indiana 46204. *(Air Pollution Control Board; 326 IAC 18-2-3; filed Sep 23, 1988, 1:45 p.m.: 12 IR 1250; filed Jul 6, 1989, 1:15 p.m.: 12 IR 2028; errata filed Jul 18, 1989, 5:00 p.m.: 12 IR 2286; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2116; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2745; errata filed Jul 5, 1995, 10:00 a.m.: 18 IR 2795; filed May 12, 1998, 9:15 a.m.: 21 IR 3758)*

SECTION 40. 326 IAC 18-2-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-4 Refresher training course requirements
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 4. (a) In order to qualify for approval, a refresher training course shall be specific to each discipline. For each discipline, the refresher training course shall review and discuss changes in federal and state regulations and other laws pertaining to asbestos, developments in state-of-the-art procedures, and a review of key aspects of the initial training course.

(b) In order to qualify for approval, a refresher training course shall meet the following requirements:
(1) An asbestos inspector refresher training course shall be at least one-half (½) day in duration.
(2) An asbestos management planner refresher training course shall be at least one (1) day in duration which shall include one-half (½) day of asbestos inspector refresher training.
(3) The following refresher training courses shall be at least one (1) day in duration:
(A) Asbestos project designer.
(B) Asbestos project supervisor or contractor.
(C) Asbestos worker.
(4) Each refresher training course shall include a written examination as outlined in section 5 of this rule.
(Air Pollution Control Board; 326 IAC 18-2-4; filed Sep 23, 1988, 1:45 p.m.: 12 IR 280; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2124; filed May 12, 1998, 9:15 a.m.: 21 IR 3766)

SECTION 41. 326 IAC 18-2-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-5 Initial and refresher training courses; examination requirements
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 5. (a) Each initial and refresher training course shall include a closed-book examination at the conclusion of each course. Demonstration testing may also be included as part of the examination.

(b) Each examination shall adequately cover the topics included in the training course for that discipline.

(c) Examinations shall have a passing score of at least seventy percent (70%) and shall consist of at least the following number of multiple choice questions for each respective discipline:
(1) Asbestos inspectors: fifty (50) questions.
(2) Asbestos management planners: fifty (50) questions.
(3) Asbestos project designers: one hundred (100) questions.
(4) Asbestos project supervisors or contractors: one hundred (100) questions.
(5) Asbestos workers: fifty (50) questions.

(d) Examinations shall not contain any questions specific to any state other than Indiana.

(e) Training course providers may allow a trainee to retake the final written examination after having failed to achieve a passing score of seventy percent (70%). The reexamination may be taken two (2) times, allowing a trainee a total of three (3) opportunities to pass the required examination. A trainee shall retake any asbestos training course examination within a two (2) week period following the completion of the initial or refresher asbestos training course. Failure of the trainee to pass the third attempt shall require the trainee to retake the entire appropriate asbestos training course.

(f) Training course providers may allow administration of an oral examination for the asbestos worker initial and asbestos worker refresher courses in those cases where an individual attending or completing a course or courses is unable to take or complete a written examination.

(g) Only training course providers or a designated employee of a training course provider who meets the requirements of section 10.1 of this rule may administer and proctor an examination. A proctor shall be present during the entire duration of the examination. *(Air Pollution Control Board; 326 IAC 18-2-5; filed Sep 23, 1988, 1:45 p.m.: 12 IR 280; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2125; filed May 12, 1998, 9:15 a.m.: 21 IR 3766)*

SECTION 42. 326 IAC 18-2-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-6 Initial and refresher training courses; qualifications for approval

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 6. Persons wishing to obtain approval of a training course shall do the following:
(1) Ensure that the training course meets or exceeds the applicable requirements of sections 3 through 5 of this rule.
(2) Issue numbered certificates to students who attend the training course and successfully pass the examination. The certificate shall indicate the following:
(A) Name of accredited person.
(B) Discipline of the training course completed.
(C) Dates of the training course.
(D) Date of the examination.
(E) An expiration date not to exceed one (1) year after the date upon which the person successfully completed the course and passed the examination.
(F) The name, address, and telephone number of the training provider who issued the certificate.
(G) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under TSCA Title II**.
(H) A statement that the training course meets requirements as outlined by the state of Indiana under this rule.
(3) Ensure that only instructors who meet the requirements under section 10.1 of this rule are used to teach the training course.
(4) Allow the department to attend, evaluate, and monitor any training course without charge to the department. The department is not required to give advanced notice of such an inspection.
(5) Ensure that each initial and refresher training course offered be specific to a single discipline and not combined with training for any other discipline.
(6) The providers of refresher training courses shall verify that students possess valid initial and, as necessary, refresher training before granting course admission. Those providers offering the initial management planner training course shall verify that students have met the prerequisite of possessing the appropriate initial inspector course at the time of course admission.
(7) Ensure that all requirements for training students will be met in the event that:
(A) the instructor does not speak a language understood by all students; or
(B) the course materials are not in a language understood by all students.

(Air Pollution Control Board; 326 IAC 18-2-6; filed Sep 23, 1988, 1:45 a.m.: 12 IR 280; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2753; filed May 12, 1998, 9:15 a.m.: 21 IR 3766)

SECTION 43. 326 IAC 18-2-7 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-7 Initial and refresher training courses; application for approval

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 7. (a) Any training course provider seeking approval of an initial training course by the department shall complete the following:
(1) Submit a completed application on forms provided by the department.
(2) Demonstrate whether the course currently has full or

contingent approval by the U.S. Environmental Protection Agency or by a state under an accreditation program approved by the U.S. Environmental Protection Agency and submit evidence of such approval.

(3) Provide the following information:

(A) The training course provider's name, address, telephone number, and primary contact person.

(B) The name of the training course.

(C) The course curriculum.

(D) A letter from the training course provider that clearly indicates how the course meets the applicable requirements of sections 3 through 5 of this rule, including the following information:

(i) Length of training in days.

(ii) Amount and type of hands-on training.

(iii) Examinations (length, format, and passing score).

(iv) Topics covered in the course.

(E) Provide a copy of all course materials (student manuals, instructor notebooks, handouts, etc.).

(F) Provide a detailed statement about the development of the examinations and a copy of the examinations used in the course.

(G) Provide the names and qualifications of course instructors (including academic credentials and field experience in asbestos abatement).

(H) Provide a description and an example of numbered certificates issued to students who complete the course and pass the examination with the following:

(i) Name of accredited person.

(ii) Discipline of the training course completed.

(iii) Dates of the training course.

(iv) Date of the examination.

(v) An expiration date not to exceed one (1) year after the date upon which the person successfully completed the course and passed the examination.

(vi) The name, address, and telephone number of the training provider who issued the certificate.

(vii) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under TSCA Title II.

(viii) A statement that the training course meets requirements as outlined by Indiana under this rule.

(I) Provide a list of all states, both U.S. EPA approved and nonapproved states, in which the course has received full or contingent approval.

(J) Provide a detailed statement of how the training course provider ensures that all requirements for training students be met in the event that:

(i) the instructor does not speak a language understood by all students; or

(ii) the course materials are not in a language understood by all students.

(4) Pay the asbestos training course provider application fees as specified in section 12 of this rule.

(b) Any training course provider seeking approval of a refresher training course by the department shall complete the following:

(1) Submit a completed application on forms provided by the department.

(2) Demonstrate whether the course currently has full or contingent approval by the U.S. Environmental Protection Agency or by a state under an accreditation program approved by the U.S. Environmental Protection Agency and submit evidence of such approval.

(3) Provide the following information:

(A) The training course provider's name, address, telephone number, and primary contact person.

(B) The name of the training course.

(C) The course curriculum.

(D) A letter from the training course provider that clearly indicates how the course meets the applicable requirements of sections 3 through 5 of this rule, including the following information:

(i) Length of training in days.

(ii) Amount and type of hands-on training.

(iii) Examinations (length, format, and passing score).

(iv) Topics covered in the course.

(E) Provide a copy of all course materials (student manuals, instructor notebooks, handouts, etc.).

(F) Provide a detailed statement about the development of the examination and a copy of the examination used in the course.

(G) Provide the names and qualifications of course instructors (including academic credentials and field experience in asbestos abatement).

(H) Provide a description and an example of numbered certificates issued to students who complete the course and pass the examination with the following:

(i) Name of accredited person.

(ii) Discipline of the training course completed.

(iii) Dates of the training course.

(iv) Date of the examination.

(v) An expiration date not to exceed one (1) year after the date upon which the person successfully completed the course and passed the examination.

(vi) The name, address, and telephone number of the training provider who issued the certificate.

(vii) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under TSCA Title II.

(viii) A statement that the training course meets requirements as outlined by the state of Indiana under this rule.

(I) Provide a list of all states (both U.S. EPA approved and nonapproved states) in which the course has received full or contingent approval.

(J) Provide a detailed statement of how the training course provider ensures that all requirements for training students be met in the event that:

(i) the instructor does not speak a language understood by all students; or

(ii) the course materials are not in a language understood by all students.

(4) Pay the asbestos training course provider application fee as specified in section 12 of this rule.

(c) A training course provider shall notify the department in writing within thirty (30) days whenever there is a significant change in the course curriculum, instructional staff, or primary contact person.

(d) The department shall review the application and shall make a determination as to the eligibility of the training course. The department shall issue a letter of approval to any training course provider, providing an approved initial training course or an approved refresher training course, who fulfills the requirements of this rule. The department may disapprove any training course which fails to meet the requirements of this rule.

(e) A letter of approval shall be valid for one (1) year from the date of issuance. *(Air Pollution Control Board; 326 IAC 18-2-7; filed Sep 23, 1988, 1:45 p.m.: 12 IR 280; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2125; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2754; filed May 12, 1998, 9:15 a.m.: 21 IR 3767)*

SECTION 44. 326 IAC 18-2-8 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-8 Application requirements for reapproval

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 8. (a) Any training course provider seeking reapproval of an approved initial training course or an approved refresher training course by the commissioner shall complete the following:

(1) Have possessed a valid letter of approval from the commissioner within the previous six (6) months.

(2) Submit a completed application on forms provided by the commissioner and include updated information as required in section 7(a)(2) through 7(a)(3) of this rule and section 7(b)(2) through 7(b)(3) of this rule.

(3) Pay the annual application fees as specified in section 12(b) of this rule.

(b) A training course provider shall notify the commissioner in writing within thirty (30) days whenever there is a significant change in the course curriculum, instructional staff, or primary contact person.

(c) The commissioner shall review the application and shall make a determination as to the eligibility of the training course provider. The commissioner shall issue a letter of approval to any training course provider who fulfills the requirements established by this rule.

(d) A letter of approval shall be valid for one (1) year from the date of issuance. *(Air Pollution Control Board; 326 IAC 18-2-8; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2126)*

SECTION 45. 326 IAC 18-2-9 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-9 Representation of training course approval

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 9. (a) No person shall make representation as conducting an approved initial training course or approved refresher training course for the purpose of licensing persons under 326 IAC 18-1 without prior written approval from the department under this rule.

(b) In any oral or written statement that indicates Indiana's approval of a training course, course providers must clearly indicate that the course is only approved for purposes of licensing under this article. *(Air Pollution Control Board; 326 IAC 18-2-9; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2127; filed May 12, 1998, 9:15 a.m.: 21 IR 3768)*

SECTION 46. 326 IAC 18-2-10.1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-10.1 Asbestos training course provider instructor qualifications

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-17-6-3; IC 13-11-2-158

Sec. 10.1. (a) Training course providers must submit resumes and qualifications of all potential instructors, including guest instructors, for approval by the department prior to their use as instructors for any course.

(b) A person to be approved as an instructor for any asbestos training course must meet the following minimum education and training qualifications:

(1) Possess a high school diploma or equivalent as provided in 326 IAC 18-1-4(a)(1) and either of the following:

(A) A bachelor's or graduate degree in architecture, industrial hygiene, engineering, building system design, science, or a related field.

(B) A combination of four (4) years of experience in asbestos inspection, planning, supervision, or cost estimation.

(2) Have completed and successfully passed the training course in the discipline that they wish to instruct. The training course shall be taken from a training course provider other than the provider for whom the instructor will be working.

(3) Provide copies of academic credentials and proof of field experience.

(c) The department will notify the training course provider within eight (8) weeks of the receipt of the application if a potential instructor is not approved.

(d) Instructors approved by the department prior to the

effective date of this rule are exempted from this section. *(Air Pollution Control Board; 326 IAC 18-2-10.1; filed May 12, 1998, 9:15 a.m.: 21 IR 3768)*

SECTION 47. 326 IAC 18-2-11 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-11 Approval revocation

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 11. (a) The department may revoke the approval of a training course if the training course provider:

(1) Violates any of the following:
(A) A requirement of this rule.
(B) A requirement of the Asbestos-Containing Materials in Schools Rule.
(C) A requirement of the Asbestos Model Accreditation Plan Rule.
(D) Any other federal, state, or local regulation.
(E) Any other laws pertaining to asbestos.
(2) Falsifies information on an application for approval.
(3) Fails to meet any qualifications specified in sections 3 through 9 and 13 of this rule.
(4) Misrepresents the extent of a training course's approval.
(5) Fails to submit required information or notifications in a timely manner.
(6) Fails to maintain requisite records.
(7) Falsifies accreditation records, instructor qualifications, or other accreditation information.

(b) The department may revoke the approval of a training course if an approved training course instructor or other person with supervisory authority over the delivery of training has been found in violation of other asbestos regulations and other laws administered by the U.S. EPA, the department, or from a state that has an accreditation plan approved by the U.S. EPA. *(Air Pollution Control Board; 326 IAC 18-2-11; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2127; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2754; filed May 12, 1998, 9:15 a.m.: 21 IR 3769)*

SECTION 48. 326 IAC 18-2-12 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-12 Application fees

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 12. (a) Upon application for initial or refresher asbestos training course approval, a training course provider shall pay a one (1) time application fee of one thousand dollars ($1,000) for each of the following disciplines:

(1) Asbestos inspectors.
(2) Asbestos management planners.
(3) Asbestos project designers.
(4) Asbestos project supervisors.
(5) Asbestos workers.
(6) Asbestos contractors.

(b) Upon application for initial or refresher asbestos training course reapproval, a training course provider shall pay an annual application fee of five hundred dollars ($500) for each of the following disciplines:

(1) Asbestos inspectors.
(2) Asbestos management planners.
(3) Asbestos project designers.
(4) Asbestos project supervisors.
(5) Asbestos workers.
(6) Asbestos contractors.

(c) Fees paid by mail shall be paid by check or money order and shall be made payable to the Asbestos Trust Fund.

(d) The application fee is not:
(1) transferable from one (1) application to another;
(2) transferable from one (1) training course provider to another;
(3) transferable to any other type of licensing or approval issued by the department; or
(4) refundable;
unless requested by the applicant and approved by the department within three (3) days of submittal to the department or prior to processing of the application by the department, whichever is earlier.

(e) If the department determines the information on the application to be incomplete, the applicant will be requested to submit the missing information. If the information is not submitted within one (1) year of the department's receipt of the application, the application will expire and the fee is not transferable or refundable. *(Air Pollution Control Board; 326 IAC 18-2-12; filed Jul 19, 1990, 4:50 p.m.: 13 IR 2127; filed May 12, 1998, 9:15 a.m.: 21 IR 3769)*

SECTION 49. 326 IAC 18-2-13 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-13 Record keeping requirements for training providers

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6
Affected: IC 13-11-2-158; IC 13-17

Sec. 13. (a) All approved providers of approved asbestos initial training and refresher training courses must comply with the following minimum record keeping requirements:

(1) Maintain copies of all training course materials used, including the following:
(A) Student manuals.
(B) Instructor notebooks.
(C) Handouts.
(2) Retain verification of instructor qualifications, including the following:
(A) Copies of all instructors' resumes and qualifications.
(B) Copies of the documents approving each instructor issued by the department.

(C) Approval for instructors by the department before teaching accreditation courses under section 7 of this rule.

(D) Notification to the department in advance whenever it changes course instructors.

(E) Records must accurately identify the instructors who taught each particular course for each date that a course is offered.

(3) Maintain the following examination records:

(A) A copy of the accreditation exam.

(B) The name and test score of each person taking the exam.

(C) The date of the exam.

(D) The training course and discipline for which the exam was given.

(E) The name of the person who proctored the exam.

(4) Maintain the following accreditation certificate records:

(A) The name of each person receiving an accreditation certificate.

(B) Proof of a passing score on the accreditation exam.

(C) The certificate number.

(D) The discipline for which accreditation was conferred.

(E) The dates training was received.

(F) The expiration of the certificate.

(G) The location of the training course.

(5) The training provider shall assure that the topic and dates of the training course correspond to those listed on each certificate of training.

(b) All approved providers of accredited asbestos initial training and refresher training courses must comply with the following records retention and access requirements:

(1) The training provider shall maintain all required records for a minimum of three (3) years.

(2) The training provider must allow reasonable access to all of the records required by the model accreditation plan (MAP) and to any other records which may be required by the department for the approval of asbestos training providers or the accreditation of asbestos training courses to both the U.S. EPA and the department upon request.

(3) If a training provider ceases to conduct training, the training provider shall notify the department and give the department the opportunity to take possession of that provider's asbestos training records.

(4) The training provider shall maintain the records in a manner that allows verification by telephone of the required information.

(Air Pollution Control Board; 326 IAC 18-2-13; filed Jul 5, 1995, 10:00 a.m.: 18 IR 2755; filed May 12, 1998, 9:15 a.m.: 21 IR 3770)

SECTION 50. 326 IAC 18-2-14 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 18-2-14 Course notification and record submittal

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11; IC 13-17-6

Affected: IC 13-11-2-158; IC 13-17

Sec. 14. All approved providers of approved initial and refresher training courses must comply with the following requirements:

(1) Notify the department in writing of all intended training courses to be held. Notification must contain course dates, daily scheduled beginning and ending times, and exact course locations. Requirements for notice of courses shall be as follows:

(A) Notice of courses to be held in Indiana must be submitted to the department two (2) weeks prior to the scheduled course start date.

(B) Notice of courses to be held outside of Indiana must be submitted to the department four (4) weeks prior to the scheduled course start date.

(C) Notice of course cancellations must be submitted to the department two (2) working days prior to the scheduled course start date.

(2) All approved providers of accredited initial and refresher training courses must provide the department, not later than two (2) weeks after completion of each course, the following:

(A) A list of all course attendee names.

(B) The type of course attended.

(C) The date or dates of the course and the examination.

(D) Exam scores for each attendee.

(E) The certificate number issued to each attendee.

(Air Pollution Control Board; 326 IAC 18-2-14; filed May 12, 1998, 9:15 a.m.: 21 IR 3770)

SECTION 51. 326 IAC 19-1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 1, 2001 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 4-2 and 326 IAC 9-1, reauthorization of 326 IAC 1-6, 326 IAC 8-7, 326 IAC 8-9, 326 IAC 8-11, and 326 IAC 18-2, and repeal of 326 IAC 19-1.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments and reauthorization. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Suzanne Whitmer, Rule Development section, (317)232-8229 or (800) 451-6027, press 0, and ask for ext. 2-8229 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for

participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-1785. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Management

TITLE 326 AIR POLLUTION CONTROL BOARD

Proposed Rule
LSA Document #01-184

DIGEST

Readopts, without changes, 326 IAC 6-4 concerning fugitive dust emissions. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period (#96-16): December 1, 1996, Indiana Register (20 IR 792).

Second Notice of Comment Period (#96-16): March 1, 1997, Indiana Register (20 IR 1650).

First Notice of Comment Period (#00-44): March 1, 2000, Indiana Register (23 IR 1488).

Extension of First Notice of Comment Period (#00-44): May 1, 2000, Indiana Register (23 IR 2109).

Second Notice of Comment Period (#00-44): October 1, 2000, Indiana Register (24 IR 132).

Second Notice of Comment Period and Notice of First Hearing (#96-16): February 1, 2001, Indiana Register (24 IR 1459).

Date of First Hearing: April 12, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

REQUEST FOR PUBLIC COMMENTS

This proposed (preliminarily adopted) rule is substantively different from the draft rule published on February 1, 2001, at 24 IR 1459. The Indiana Department of Environmental Management (IDEM) is requesting comment on the entire proposed (preliminarily adopted) rule.

The proposed rule contains numerous changes from the draft rule that make the proposed rule so substantively different from the draft rule that public comment on the entire proposed rule is advisable. This notice requests the submission of comments on the entire proposed rule, including suggestions for specific amendments. These comments and the department's responses thereto will be presented to the board for its consideration at final adoption under IC 13-14-9-6. Mailed comments should be addressed to:

#96-16 [01-184] Fugitive Dust
Kathryn A. Watson, Chief
Air Programs Branch
Office of Air Quality
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by June 21, 2001.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from February 1, 2001, through March 5, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

American Electric Power, (AEP)
BP Amoco Corporation, Whiting, (Amoco)
Bethlehem Steel, (BES)
City of Indianapolis, (City)
Countrymark, (CM)
Indiana Cast Metals Association, (CMA)
Eli Lilly and Company, (ELC)
ESSROC, (ESS)
Indiana Electric Utility Air Work Group, (EUG)
Ferro Corporation, (FC)
General Cable, (GC)
GE Plastics, (GE)
Hoosier Energy, (HE)
Indiana Coal Council, Inc., (ICC)
Indiana Manufacturers Association, (IMA)
Indianapolis Power & Light Company, (IPL)
K-T Corporation, (KTC)
NiSource, (NIS)
Quemetco, Incorporated, (QI)
Richmond Power & Light, (RPL)

Following is a summary of the comments received and IDEM's responses thereto:

Definitions (326 IAC 6-4.5-2)

"Dust"

Comment: The definition of "dust" should not include liquid material. By its very nature, dust does not include liquid material. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Comment: In the definition of "dust", delete the comma after the word "steam". (ELC) (GE)

Response: Existing air rules treat airborne finely divided liquids, excluding uncombined water, as particulate matter, instead of treating liquids separately. This is because finely divided liquids can have effects on health, safety, and property similar to those caused by solid matter. The draft rule and the revised draft rule are consistent with this concept and with the existing fugitive dust rule. The comma after the word "steam" has been deleted to clarify the definition.

Comment: The definition of "dust" encompasses particulate matter generated by combustion. Thus, the proposed rule overlaps with the open burning rule. If this is IDEM's intent, the exemptions in Article 4 must be translated to the fugitive dust rule. (GE)

Response: The rules are independent of each other. However, both the fugitive dust rule and the open burning rule (326 IAC 4-1) can overlap when the smoke from open burning is crossing the property line at ground level. Open burning provisions include requirements to manage and control smoke from crossing a property line or creating a nuisance.

"Excessive wind speed"

Comment: IDEM should evaluate the definition of "excessive wind speed". Provide a basis and justification for a one-hour average wind speed of 30 mph or an instantaneous wind speed of 40 mph. Based on review of fugitive dust regulations for other Midwestern states, Illinois provides an exemption from fugitive dust control requirements when the one-hour average wind speed exceeds 25 mph. (EUG) (HE) (IPL) (NIS)

Comment: We agree that a definition of "excessive wind speed" is beneficial. However, it is recommended that the wind speed for the one-hour average be lowered. According to the National Weather Service (NWS), the average wind speed in Indiana is 9.8 mph. The NWS issues a wind advisory beginning at 25 mph sustained winds. Additionally, it is recommended to clarify the hourly wind speed. The wording suggests only one reading is used to calculate the hourly average because only the hourly recorded value is needed. (City) (ICC)

Comment: If IDEM continues to retain a methodology that includes instantaneous observations of fugitive dust crossing a company's property line, an exemption based on an instantaneous wind speed (gusts) should be included in the exemptions clause and the gust speed should be 35 mph. (EUG) (IPL)

Comment: The definition of "excessive wind speed" appears to be exclusive of all potential fugitive dust observations other than upwind/downwind monitoring. Meteorological data from the nearest source should be available for use in evaluating all potential fugitive dust situations whether monitored or visual. (ELC)

Comment: Delete the rule language specifying particulate matter monitor height. It is confusing, and is already included under Section 3(1)(D), which should also include specific requirements for meteorological data. (ELC)

Response: IDEM has proposed that "excessive wind speed" be defined at the 30 mph hourly average to be consistent with U.S. EPA's guidelines for ambient monitoring of particulates, "Guideline on the Identification and Use of Air Quality Data Affected by Exceptional Events", EPA-450/4-86-007, July 1986. An "exceptional event" is one where the wind conditions are such that industrial or other sources should not be held responsible for excessive dust conditions. The 30 mph hourly average is an appropriate measure for fugitive dust conditions in Indiana that should not be considered the responsibility of the source. For upwind/downwind monitoring described in the rule, a continuously recording wind speed (WS) and wind direction (WD) meteorological instrument will be operated in conjunction with one of the particulate monitors, allowing IDEM to determine excessive wind speed as well as to verify upwind/downwind quadrants. U.S. EPA's guidance document defines "high winds" as gusts equal to or greater than 40 mph; IDEM will add this language to the rule. The abovementioned guidance was established for a national application using average wind speed conditions from all states. IDEM believes that 30 mph is a reasonable level for an exceptional event in Indiana. If additional evidence can be produced to support lowering this hourly average to 25 mph, IDEM would be willing to discuss this further.

The comments are correct that the National Weather Service and U.S. Weather Bureau do not record hourly averages of wind speed. IDEM has revised the draft rule to provide that IDEM will use the closest state, local, or industrial meteorological station that collects continuous WS data according to quality assurance procedures provided in Chapter 9 of the Indiana Quality Assurance Manual (June 1997).

"Fugitive dust"

Comment: The definition of fugitive dust should be modified to be consistent with the long-standing and well-recognized definition of fugitive dust: dust emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (Amoco) (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Comment: Point sources should not be included in the definition of fugitive dust. Emissions of regulated pollutants from point sources are specifically regulated by their permits and other rules in the Indiana state implementation plan (SIP). (Amoco) (CMA) (EUG) (HE) (IPL) (NIS)

Comment: The proposed definition of fugitive dust will include emissions from properly operated and maintained facilities which are in compliance with their permits. (FC)

Comment: If surface coal mining operations are not exempt from this rule, the definition of fugitive dust should be expanded to include property line or property boundary, right-of-way, or easement, or the surface coal mine permit boundary. (ICC)

Response: Although IDEM has included a definition of fugitive dust in this draft rule that differs somewhat from the current rule, IDEM does not intend to change the general focus of the fugitive dust rule with this rulemaking. The fugitive dust rule has always applied to point sources. The proposed revisions to the rule maintain the existing applicability of the fugitive dust rule to point sources. As noted in the comments, permit conditions or other rules may impose additional limitations on, or otherwise regulate, point source emissions. Maintaining the applicability of the fugitive dust rule to point sources would in no way relieve a source from complying with other applicable requirements. The fact that additional limitations may apply to a point source does not relieve a point source from maintaining adequate dispersion of its emissions. Compliance with all applicable requirements will, in most cases, mean the source will not generate observable excessive fugitive dust.

The opacity rule regulates the visible emissions, or opacity, of the plume, typically at the stack exit. The fugitive dust rule regulates adequate dispersion of the plume once it crosses a property line where it would most affect the public.

Comment: The definition of "fugitive dust" is unreasonable in that a source could be held responsible for fugitive dust emissions that originated from off the property. (NIS)

Response: Sources are responsible for any fugitive dust originating from their property, but are not responsible for dust upwind of their property. The definition of "fugitive dust" addresses this issue in part because a fugitive dust source means any fugitive dust-emitting location, process, operation or activity. A source that is "emitting" or generating dust that blows across a property line is subject to the rule. This issue is also addressed by the finding of excessive fugitive dust through the measurement of both upwind and downwind concentrations, visual observation of the dust, or secondary deposition analysis, as applicable.

Finding of Excessive Fugitive Dust (326 IAC 6-4.5-3)

General

Comment: We recommend either deleting 326 IAC 6-4.5-3 or rewriting it to address only visible fugitive dust emissions from specified sources that is observed crossing property lines. (EUG) (IPL)

Response: IDEM does not agree with the recommendation to delete 326 IAC 6-4.5-3, Finding of Excessive Fugitive Dust. Section 3 provides the circumstances under which the department will issue a finding of excessive fugitive dust. A finding of excessive fugitive dust results in the requirement for a source to create a fugitive dust control plan. Compliance with an approved fugitive dust control plan should reduce excessive fugitive dust to the extent practicable.

Comment: The Authority and Affected statutes for this section do not address enforcement of regulations, but rather the adoption of the proposed language. What is the authority of the agency to include this new enforcement procedure? How will IDEM implement it? (ELC)

Response: The Indiana Air Pollution Control Board has authority under IC 13-17-1 to adopt rules to protect Indiana air quality and address sources of air emissions. The Indiana Department of Environmental Management has authority under IC 13-14-2 and IC 13-30 to implement those rules, including compliance and enforcement activities where appropriate. IDEM has proposed an approach that begins with a finding of excessive fugitive dust and requirement to prepare a fugitive dust control plan because it directly addresses the fugitive dust problem. This is a reasonable approach that focuses primarily on addressing the air pollution problem.

Comment: Use of the 22.5E wind variation in both the upwind and downwind directions is too broad. Specify the wind direction in one half of a STAR wind direction sector (11.25E) at the upwind area and the downwind direction is 180E from that wind direction sector that already includes the 11.25E of variability. (NIS)

Response: IDEM set the twenty-two and five-tenths (22.5) degree sector because if the wind stays within that quadrant, the emissions are coming from the site. IDEM is confident of this based on its past experience.

Comment: The draft rule language in section 3(1)(C) needs to be clarified to have both upwind and downwind monitors operate simultaneously, with both upwind and downwind monitors starting within one minute of each other and shutting down within one minute of each other. (NIS)

Response: The department agrees and the draft rule language has been clarified.

Comment: It would be appropriate to include specific requirements for monitors and meteorological data under Section 3(1)(D). (ELC) (GE)

Comment: Fugitive dust should be viewed as a ground-level event. Placing monitors between 2-15 meters above the ground takes monitoring beyond ground-level events. (CMA) (IMA)

Response: The 2-15 meter range is the federal ambient monitoring range for monitoring ground level events. This range is widely accepted and used by U.S. EPA, states and local agencies for probe placement of ambient monitoring of ground level emissions. However, IDEM can foresee no application for conducting this monitoring above five meters and, therefore, will modify the rule to set the monitor probe height at 2-5 meters above ground level.

50 ug/m3 standard/one hour standard [326 IAC 6-4.5-3(1)]

High-volume sampling [326 IAC 6-4.5-3(1)(F)]

Comment: The techniques described in proposed paragraph (F) should be spelled "high volume sampling", based on 40 CFR 50 Appendix B. (GE)

Response: Based on the language in 40 CFR 50, Appendix B, IDEM has changed "hi-volume" to "high-volume".

Comment: IDEM's proposed fugitive dust exceedance of 150 ug/m3 for one hour is too stringent. (FC) (IMA)

Response: The current rule does not establish 150 ug/m3 as an "exceedance" level, but focuses instead on whether the source would contribute at least 50 ug/m3 to ambient air that already contains a relatively high level of particulate. Under the current rule, if a source contributed 50 ug/m3 or more it would be considered a violation even if the background level was extremely low. IDEM believes the draft rule language, which contains both an ambient level that is considered to be unhealthy and a delta for which the source would have to be determined to be responsible, is more carefully targeted to addressing serious air quality problems.

IDEM also believes that the specific standards included in the rule are appropriate. The 150 ug/m3 standard is the number that U.S. EPA established as the welfare-based standard under the national standard for total suspended particulates (TSP). A 50 ug/m3 increase represents 33% of that welfare-based standard and 67% of the prior health-based TSP standard of 75 ug/m3.

Comment: The 60-minute monitoring period is inconsistent with the 24-hour test method set forth in 40 CFR 50, Appendix B. IDEM has not determined that the accuracy and precision of the Appendix B method will not be adversely affected by using a much shorter sampling period. The rule should specify the same time period as the sampling and analysis method. (GE)

Response: As required by P.L. 123-1996, IDEM evaluated the 60-minute time period for upwind/downwind monitoring. IDEM has retained this time period for several reasons. Many fugitive dust events do not last significantly longer than 60 minutes, and, if averaged over many hours, a very serious, although short-term, fugitive dust event might be considered in compliance with the rule. Moreover, wind direction shifts frequently, so it may not be possible to monitor upwind/downwind for several hours, even though the wind can blow long enough in one direction to cause a fugitive dust problem. Many of the sources IDEM regulates are not in operation 24 hours per day. However, fugitive dust problems are often short-term and cannot be effectively regulated by averaging over 24 hours.

IDEM has discussed this issue with U.S. EPA, who has confirmed that this methodology is appropriate to use for monitoring periods shorter than 24 hours. U.S. EPA agrees that using the total number of minutes that the monitor ran to determine total air volume for the calculation of mass concentrations is an appropriate application of the high-volume method addressed in 40 CFR 50, Appendix B.

Comment: Clarify section 3(1)(E), requiring wind direction remain consistent for 95% of the monitoring time period. How can IDEM determine if the wind direction is consistent? (City)

Response: For upwind/downwind monitoring purposes, IDEM will conduct meteorological monitoring at one of the two particulate monitoring sites to determine wind direction consistency. In addition to on-site measurements, IDEM may use meteorological data from the closest state, local, or industrial operated meteorological site that meets quality assurance requirements.

Comment: The proposed rule goes far beyond what is necessary to achieve compliance with NAAQS. Fugitive dust is not a regulated pollutant. (CM) (BES) (ESS) (GC) (ICC) (KTC) (QI) (RPL)

Comment: There are no data to support the health claims IDEM has used to justify its approach. We support implementation of a chronic standard of at least three violations and only if that number is exceeded would a fugitive dust plan be required. (CMA)

Comment: The rule serves no useful purpose to evaluate the impact on public health unless the downwind particulate matter concentrations are averaged over a 24-hour period consistent with the particulate matter short-term ambient air quality standard. If such an approach is used to assess the impact of fugitive dust on ambient air, IDEM needs to ensure that high-volume sampler filter pad analyses are performed

on the particulate matter samples to determine the appropriate source of the fugitive dust. (EUG) (IPL)

Response: The Clean Air Act charges U.S. EPA with developing national standards for certain key air pollutants. States have clear legal authority to implement additional requirements, especially to address localized air pollution issues, such as fugitive dust. Moreover, Indiana law provides that it is the purpose of air pollution control laws to "maintain the purity of the air resource of Indiana, which shall be consistent with protection of the public health and welfare and the public enjoyment of the air resource, physical property and other resources, flora and fauna, maximum employment, and full industrial development of Indiana." (IC 13-17-1-1)

This rule is not intended to determine compliance with the respirable particulate NAAQS but is intended to determine the impact of fugitive dust from specific sources on citizens and properties located downwind of these sources. The methodology outlined in this rule is the high-volume method for determination of total suspended particulates and encompasses particulate matter much larger than PM_{10}. Given IDEM's statutory mandate to protect the air resource through prevention, abatement, and control of air pollution (IC 13-17-1-1), IDEM believes this rule is warranted. IDEM has received an average of 120 complaints per year in the last six years. Fugitive dust is a real air quality issue for many citizens who expect the department to provide relief.

Comment: The rule should not be submitted as a SIP amendment because it has nothing to do with NAAQS. (CM) (BES) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Response: The fugitive dust rule is part of Indiana's approved SIP for TSP. The department will discuss the need for a SIP amendment with U.S. EPA.

Comment: The rule should state that it is not an applicable requirement for purposes of the Title V permitting program under 326 IAC 2-7. (CM) (BES) (ESS) (GC) (KTC) (QI) (RPL)

Response: IDEM disagrees. The state fugitive dust rule is an applicable requirement and will be included in Title V permits. Submission of a fugitive dust control plan to address a finding of excessive fugitive dust does not require a revised application.

Comment: We support section 3(1) that details the downwind concentration in exceedance of 150 ug/m3 prior to being a violation. By detailing the requirement for "dirty air," the upwind/downwind testing will become more effective in determining whether a problem exists. (City)

Response: IDEM agrees.

Visible emissions crossing property line [326 IAC 6-4.5-3(2)]

Comment: This rule would penalize a source for visible dust crossing the property line even if the dust presents no health hazard. IDEM has not explained why visible dust that presents no health concerns should be regulated. We request the approach in the current rule be maintained in any new rule. (GE)

Comment: There is no indication of the duration of observation needed to make the determination of the fugitive dust crossing the property line nor the specification of the "opacity" threshold needed to qualify the observation as a valid occurrence of fugitive dust crossing the property line. Both specifications should be added to the rule. (NIS)

Response: The visible emissions standard included in the draft rule is essentially the same as the one in the existing rule. Because upwind/downwind monitoring is not feasible in most situations because of limitations on monitors and staff availability and because they cannot monitor fugitive dust events spontaneously, some type of visible emissions observation is essential for implementation of this rule. If an inspector observes visible dust crossing the property line, that is a clear indication of emissions that create some impact on downwind neighbors. Often, an observance of visible emissions corroborates other indications that dust is escaping a source's property, such as observable dust on neighbors' property or likely sources of fugitive dust (e.g., dry piles or dusty roads) on the source's property.

IDEM understands the commenter's desire for a numeric standard or threshold amount of fugitive dust; however, it is difficult to apply the opacity standard due to the limitations of Method 9. These limitations include positioning, observations before sunrise or after sunset, and averaging for intermittent emissions. IDEM will continue to discuss this issue with interested parties; however, and consider whether Method 22, which applies to fugitive emissions, could be applied or adapted for the purposes of this rule.

Comment: The observation should be made in accordance with the procedure of Method 9. The observer should also be currently certified in accordance with Method 9. (ELC) (NIS)

Comment: Define "local agency" to include only local air pollution agencies. To have other than trained air agency officials able to conduct these inspections would be inappropriate. (ICC)

Response: The department can and has used other offices and agencies to address fugitive dust complaints and fugitive dust sources. This is an effective manner to address local and regional fugitive dust complaints and problems. All designated representatives must be trained in Method 9.

Comment: Incorporate U.S. EPA Method 22 into this rule in addition to Method 9. Method 22 is more appropriate for evaluating fugitive dust from vehicle traffic and material handling activities that are routinely found at power plants and other industrial facilities. By using Method 22, sources will be better able to properly measure and quantify the effects of fugitive dust emissions because of facility activity. (AEP)

Response: Method 22 may be a possible solution with an opacity limitation defined in 326 IAC 6-4.5, but IDEM would need to amend Method 22 to include emissions from stacks and vents and set an instantaneous limit or standard. IDEM will consider the use of Method 22 prior to final adoption.

Comment: It is recommended that subsection (4) be deleted since it applies to plumes from a stack or vent. Point sources such as stacks or vents should not be included in this rule because they represent other types of air pollution sources subject to different regulatory requirements. (EUG) (IPL)

Comment: The proposed rule should be related to fugitive emissions at or near ground level. (Amoco) (CM) (BES) (ESS) (GC) (KTC) (QI) (RPL)

Response: A source that is regulated by opacity regulations is also subject to fugitive dust rules if plumes from that source are not adequately dispersing. If a plume is adequately dispersing, then it is not fugitive dust. The revised draft rule, at 326 IAC 6-4.5-5(4), specifically exempts, from the definition of "fugitive dust," plumes from a stack or vent that:

(1) are visible when crossing the property line;

(2) do not downwash to less than ten meters above the ground;

(3) are in compliance with other applicable rules; and

(4) have no finding of fugitive dust based on secondary deposition analysis.

Secondary deposition analysis [326 IAC 6-4.5-3(3)]

Comment: The proposed rule should define the term "secondary deposition analysis" and describe the procedures for performing this analysis. (City) (CMA) (ELC) (NIS)

Comment: Provide guidance for using secondary deposition analysis to make a finding of excessive fugitive dust. Specify the methodology, controls and quality assurance measures to ensure the proper source is identified. (ICC)

Comment: Section 3(3) regarding excessive fugitive dust determined through secondary deposition analysis should be deleted. It is unreasonable and unfair. It would be impossible for a source to demonstrate if an exception applied. (CM) (BES) (ESS) (FC) (GC) (KTC) (QI) (RPL) (GE)

Comment: Allowing a determination of fugitive dust as provided in the rule language does not consider other possibilities for the deposition of the dust. There is also no limit or cap on the number of samples that may be taken, and no provision for allowing the suspected source to take a similar sample on the same day. (CMA) (ELC) (IMA)

Comment: In regard to subsection (3), IDEM should specify the "accepted sampling procedures" so the results of an analysis of secondary deposition can be replicated by the affected source to verify or refute IDEM's determination of fugitive dust impacts off plant property. (EUG) (IPL)

Comment: The vague language in Section 3(3) allows the agency great leniency in making determinations. Establish a prescriptive method by detailing "accepted sampling procedures". Without standardized procedures, the rule is unenforceable. (ELC) (GE)

Response: IDEM has experience with situations in which it was evident that a downwind area was the recipient of fugitive dust, but emissions were not visible and upwind/downwind monitoring was not feasible. Analysis of dust particles may not be conclusive in all cases, but in some cases may clearly identify the source of the dust.

The methodologies used to conduct particulate monitoring and wind speed and wind direction determinations will be consistent with methodologies approved in 40 CFR 50 App B. IDEM will follow "The Quality Assurance Handbook for Air Pollution Measurement Systems," Volume IV Meteorological Measurements EPA/600/R-941038d, March 1995, which includes continuous monitoring of meteorological data. IDEM will support any finding of excessive fugitive dust with documentation of the methodology used.

The accepted methodologies used to collect particulate samples for secondary deposition analysis and the methodology for microscopic analysis of particulate matter are outlined in a four volume document entitled The Particle Atlas by McCrone Microscopy Lab. Any microscopic analysis performed by IDEM, or by an outside lab for IDEM, will be conducted in accordance with this document.

Comment: The language in Section 3(3) is vague. It does not include the right of a source to dispute a finding. Subsection (3) should either be deleted or an appeal process should be added to include the right to conduct additional analyses to disprove a claim made. (AEP) (IMA)

Comment: A rule that uses such vague and unintelligible standards as in Section 3(3) is incapable of uniform enforcement. IDEM should retain the ability for a source to rebut the finding of excessive fugitive dust. (ICC)

Comment: While IDEM has consistently indicated a first-time violation would result only in a mandated fugitive dust control plan, it clearly defines this as a "violation". The rule language should include the final action as subject to appeal. (CMA) (IMA)

Response: IDEM does not believe that the language in this subsection is vague or unintelligible. Indiana law provides for appeal of all final determinations made by the agency. Certainly if IDEM based an enforcement action on the results of secondary deposition, there will be an opportunity for the source to rebut or challenge the agency's finding. Appeals and appeal procedures are available through the IC 4-21.5 upon final agency action.

Fugitive dust control plan (326 IAC 6-4.5-4)

Comment: Isolated incidences of fugitive dust violations should not trigger the requirement for a fugitive dust control plan. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Comment: A defined violation limit should be included with this rule that would trigger the need for a fugitive dust control plan. (AEP)

Response: The limit contained in the rule is "no visible emissions crossing the property line". There are several exceptions to this limitation listed in the rule. To avoid most isolated incidences, a fugitive dust control plan should be as easy to implement as developing good work practices. It is the intent of this rule not to eliminate but to minimize dust where practicable.

Comment: The existing control plan language at 326 IAC 6-5-3, 326 IAC 6-5-4, and 326 IAC 6-5-5 has worked well in the State's nonattainment areas and should be considered as appropriate for the current rulemaking. (Amoco) (CMA)

Response: 326 IAC 6-5 requires a fugitive dust plan in certain specified areas of the state. Other rules may require plans for certain sources. The proposed rule would require a plan where there has been a finding of excessive fugitive dust and the rule would apply to sources statewide.

Comment: Section 4(c)(5)(B) should be deleted. Particulate collection equipment is applicable to stack sources, not fugitive sources. (NIS)

Response: IDEM disagrees. It may be necessary to modify existing control equipment in order to ensure that under unusual circumstances or meteorological conditions excess fugitive dust does not occur as a result of the particular process.

Comment: Section 4(c) is vague. Modify this section by replacing the word "origin" with more specific language. (GE)

Response: IDEM agrees and has clarified the language.

Comment: We are concerned with potential delays in compliance by allowing a facility 30 days to respond to IDEM's finding of excessive fugitive dust. The nuisance of fugitive dust may continue for the period of time up IDEM's notification of the requirement of a fugitive dust control plan for the facility and through the period of IDEM's receipt of the proposed plan from the facility. (City)

Comment: The rule should allow for more than 30 days to submit a fugitive dust control plan. (BES) (CM) (CMA) (ELC) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Response: IDEM believes that 30 days following the receipt of a written finding of excessive fugitive dust is a realistic and reasonable time period for sources to submit a complete and accurate fugitive dust control plan, but has provided an opportunity for an extension when justified. IDEM inspectors also inform source operators at the end of the inspection when they have observed fugitive dust and would identify measures that could be implemented very quickly, even while the fugitive dust control plan is being prepared.

Comment: The proposed standard of "to the extent practicable" is ambiguous. It would be impossible to know if this standard had been met, and that it had been implemented fairly and consistently. (CMA) (GE)

Response: IDEM recognizes that there may be some situations where it would be extremely costly, to the point of being prohibitive, to totally eliminate any possibility of fugitive dust. Including the phrase "to the extent practicable" is recognition that the department does not intend to require control measures that go beyond what can be reasonably determined as practical measures.

Comment: The rule language concerning control plan requirements needs to be clarified. The control plan requirement should apply to both an initial finding of excessive fugitive dust and any subsequent findings. (GE)

Response: Subsequent findings of excessive fugitive dust may mean the initial plan is not adequate or it is not being implemented. Subsection (i) includes a procedure to amend the plan if necessary.

Comment: The control plan requirement should specify the owner or operator of a source to submit the control plan. (GE)

Response: The draft language has been changed.

Comment: The rule should include defined time periods for IDEM to review a fugitive dust control plan. (AEP) (City) (ELC)

Comment: The rule should include a defined time period for the department to respond to a source's request for amending or withdrawing the control plan. (ELC)

Response: The department and local agencies will make every effort to expedite the review and implementation of fugitive dust control plans.

Comment: Once a fugitive dust control plan has been approved or designed by IDEM, what mechanism does IDEM have if the approved plan is inadequate? A provision should exist for a source to submit amendments or modifications to an inadequate control plan. (City) (CMA) (GE)

Comment: Amendments to a fugitive dust control plan should not be required to ensure it is current with activities causing excessive fugitive dust at the source. (ICC)

Comment: An appropriate implementation period should be included with any control plan. (CMA) (ELC)

Comment: The rule should allow the facility to modify a plan within an acceptable time frame. (NIS)

Response: If IDEM feels the plan is inadequate, IDEM will discuss this with the source and request that the plan be modified. In addition, if particular remedial measures will take longer, IDEM will work with the source to develop an implementation schedule that is reasonable under the given circumstances.

Comment: Specify in the rule language that a department-issued control plan be no broader in scope than required by subsections (b) and (c) of the proposed rule. (GE)

Response: IDEM agrees and has modified the draft rule.

Comment: Which of the "actions" would be considered an "agency action" or "order" as defined in the Administrative Orders and Procedures Act, and for which the source could seek review? Does the agency have the resources to issue an order with prescriptive control measures in such a time period that it can be implemented in the proposed 30-day period between notice and submittal? Reference should be made in the rule under what authority the department would issue an order. (ELC)

Comment: Any finding of excessive fugitive dust is an agency action subject to review under IC 4-21.5. In addition to the 30-day time frame, the rule should provide the legal rights to delay submitting a fugitive dust control plan until after exhausting available administrative remedies. (ICC)

Response: IC 4-21.5-3 determines which agency actions are appealable. If a determination of the department is appealed, the procedures of the administrative process will be available to the source, including requests that the agency action be stayed pending approval.

Comment: In the event that a source does not reply to IDEM's request to submit a fugitive dust control plan, IDEM should not issue a fugitive dust control plan for the source. The source should be subject to enforcement action, especially if the fugitive dust problem is ongoing. (City)

Comment: IDEM should make only suggestions for a source's fugitive dust control plan. The source itself should have the final say. (CMA)

Response: IDEM strongly agrees that the source is in the best position to develop a control plan, and considers an IDEM-developed plan to be a last resort, only where the source does not take this responsibility on themselves. There may be cases, however, where a source is unwilling to develop a plan or take steps to address fugitive dust. Under those circumstances, IDEM has the responsibility to take steps itself to reduce the impact of fugitive dust on downwind neighbors. This is consistent with the draft rule's emphasis on remedial action.

Comment: The basis for a finding of excessive fugitive dust should not be a violation, which would allow IDEM to impose penalties. Rather, IDEM should rely on the provisions set forth in proposed 326 IAC 6-4.5-4(m) for enforcement of the rule. (BES) (CM) (ESS) (GC) (KTC) (QI) (RPL)

Comment: We request the department use existing enforcement procedures. (ELC)

Response: IDEM's intent with this draft rule is that the first step will always be development and implementation of a fugitive dust control plan. Traditional enforcement could be pursued if efforts to handle the issue through development of the plan were unsuccessful.

Comment: Will the agency notify the source of a finding of excessive fugitive dust? Who determines the type of control plan to be developed? (ELC)

Comment: Section 4 of the rule is too broad. A fugitive dust control plan should only be required for the specific activities causing excessive fugitive dust, not for the entire site. Additional information should only be provided to IDEM if it is necessary to implement or review the control plan. (BES) (CM) (CMA) (ESS) (FC) (GC) (GE) (ICC) (KTC) (NIS) (QI) (RPL)

Comment: Subsection (4) is overly prescriptive. This information can change rapidly and is not necessary for developing a useful control plan. (ELC)

Response: Section 4(b) requires either a source-wide fugitive dust control plan or a specific plan, depending on whether the activities associated with the fugitive dust can be identified. Sections 4(c)(3) and 4(c)(4) require specific information about all processes and actions that emit or have the potential to emit fugitive dust, requiring that the source identify and evaluate these areas. A source-wide plan is not necessary, provided that the specific unit or area causing the dust can be identified. IDEM has amended sections 4(c)(3) and 4(c)(4), in the revised draft rule, to provide that, when the origin of the excessive fugitive dust can be reasonably identified, only those processes, areas, and materials relating to the origin shall be identified. Under 4(c)(7), IDEM would notify the source and specify the necessary information needed to complete a review of the plan.

Comment: Are monetary and personnel costs and/or the source's financial condition considered when determining what is "practicable"? (FC)

Comment: The rule should only require measures that are at a reasonable cost given the particular fugitive dust concern. (BES) (CM) (ESS) (GC) (KTC) (QI) (RPL)

Comment: IC 13-17-1-1 and IC 13-17-3-4 provide that a rule be limited to "safeguarding the air resource...by all practical and economically feasible methods". A fugitive dust control plan should include only practical and economically reasonable measures to correct excessive fugitive dust. (ICC)

Response: IDEM does not expect the costs to be significantly different than those currently associated with compliance with the rule. There may be some additional costs in writing a fugitive dust control plan.

Comment: The rule should not require that the operating permit include any approved fugitive dust control plan. This would make amending the plan more difficult and could cause the plan to become federally enforceable. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Comment: The control plan should be treated like a preventative maintenance plan and kept separate from permits. (CMA)

Comment: The rule should not impose record keeping and reporting requirements beyond those required in a Title V or FESOP permit. (ICC)

Comment: The control plan should not be required to be incorpo-

rated into the operating permit, but submitted to the agency and available on site for review. (ELC)

Response: The rule has been revised to provide that the requirement to have a fugitive dust control plan and may be included in the permit, but the plan itself is not included in the permit.

Exceptions (326 IAC 6-4.5-5)

Comment: The exception for stacks or vents appears to be contingent upon proof that no excessive amount of dust exists. This rule is broad. It places an increased burden of proof on the regulated community. (IMA)

Comment: It is unnecessary for a unit of government to submit a road improvement schedule in order to be exempt from this rule. Road improvements and planning should be left to the local units of government, state and federal DOT. (FC)

Response: The purpose of the fugitive dust rule is not to eliminate, but rather to minimize dust where practicable. The exceptions in the rule are situations where IDEM believes further control is impractical.

Comment: What square footage of bird or bat droppings "at least two (2) inches thick" is large enough to trigger requirements under Section 5(2)? Health departments are responsible for the prevention of histoplasmosis and other diseases. They should have the ability to propose rules to control the spread of disease and should be allowed to do so without well-meaning interference from IDEM. (FC)

Comment: This section needs clarifying. It would seem that any droppings would be of concern and cause for not exempting such a situation. (NIS)

Response: The department is discussing this comment with the State Department of Health to provide more clarity on these issues.

Comment: IDEM proposes replacing "best management practices" with "every reasonable precaution". We are unaware of the use of this term in other regulatory settings and believe the former provides more clarity. (Amoco) (CMA)

Response: The department is not proposing a change. The current rule uses "every reasonable precaution" and the draft rule language uses the same language.

Comment: For the purpose of determining whether a fugitive dust issue exists, it should not matter if a plume from a stack or vent is in compliance with other applicable rules. Imposing a violation of the fugitive dust rule when there is no fugitive dust problem has no rationale. (GE)

Response: IDEM does not intend to issue findings of excessive fugitive dust where there is no fugitive dust problem.

Comment: Stack sources in compliance with all other requirements should be exempt. (BES) (CM) (CMA) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Comment: An exemption should exist for sources whose fugitive emissions are already regulated by a MACT/NESHAP standard or other rule containing fugitive dust requirements. (QI)

Comment: Section 5(4) should be deleted. It applies to plumes from a stack or vent which should not be included in this rule because they represent other types of air pollution sources already subject to different regulatory requirements. (HE)

Response: The purpose of this rule is to control fugitive dust escaping beyond property lines. It may address fugitive emissions regulated by other rules but only applies where a plume does not adequately disperse and crosses the property line.

Comment: Under Section 5(4), clause "(D)" should be added before "and there is no finding of excessive fugitive dust..." (City)

Response: IDEM disagrees. The rule language is grammatically correct as written.

Comment: An exception should be allowed for more meteorological situations than excessive wind speed or drought. (BES) (CM) (CMA) (ESS) (FC) (GC) (KTC) (QI) (RPL)

Response: IDEM specifically included in the rule only those meteorological conditions that affect fugitive dust: excessive wind speed and drought. Other meteorological conditions occurring in Indiana do not provide a basis for an exception to the fugitive dust requirements.

Comment: IDEM's response to our initial comment that surface coal mining received the same exemption as agricultural operations, construction and demolition activities, and public roads was not adequately justified. Coal mining is already regulated by the Surface Mining Control and Reclamation Act, which imposes fugitive dust control plans on surface coal mining operations. (ICC)

Response: The nature of coal mining, which is essentially a manufacturing process, is different from the activities currently listed as exempt from the rule. For many processes in a coal mining operation, reasonable controls are available to minimize fugitive dust. IDEM does recognize that coal mining has unique characteristics and would like to discuss with the industry further the possibility of developing a nonrule policy or guidance document to address fugitive dust generating from surface coal mining activities.

Motor vehicle dust sources (326 IAC 6-4.5-6)

Comment: Contents from "dripping, sifting, leaking or otherwise escaping from vehicles" are already covered under DOT regulations and should be deleted from this rule. (BES) (CM) (ESS) (GC) (KTC) (NIS) (QI) (RPL)

Comment: There is no justification for shifting responsibility for trucks to the property owner and away from trucking operators. The issue was addressed in the current 326 IAC 6-4-4. (CMA)

Response: Fugitive dust generated by motor vehicles or commercial property can be a real problem and IDEM believes it should be the responsibility of both the vehicle owner or operator and the property owner to take steps to avoid generation of fugitive dust. While this subject may be covered by U.S. DOT regulations, the language is also needed in the state rules.

Comment: It is unclear who is responsible for submitting a long-range schedule for necessary road improvements to the department. (NIS)

Response: IDEM has received the rule language to clarify that the unit of government responsible for maintenance of the roadway would be responsible for developing a schedule of improvements.

Comment: Provide guidance as to the criteria for considering mud an environmental hazard or include in this rule all vehicles that track mud. (FC)

Response: IDEM is regulating only the tracking of mud that would create conditions that result in the generation of material that will become airborne. Not all vehicles are included in this rule. The rule is limited to commercial and business vehicles. IDEM anticipates that such measures as wheel washing, road cleaning, and other available techniques will be used to prevent mud tracking.

Miscellaneous

Comment: Revise Sections 2 and 3 of this rule to use small case letters rather than numbers to identify the primary subdivisions of these sections. (AEP)

Response: The drafting style of a rule is under the control of the Legislative Services Agency, the publisher of the Indiana Register. In this particular case, lower case letters are only used after a section number to indicate a subsection. Sections 2 and 3 do not require subsections.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 12, 2001, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of amendments to 326 IAC 6-4. Comments were made by the following parties:

Blake Jeffery, Director, Indiana Cast Metals Association, (CMA)
Anne Heighway, Environmental Affairs, Eli Lilly Company, (ELC)
Al McMahon, General Electric Company, (GE)
Jim Hauck, Barnes & Thornburg, (BT)
Vince Griffin, Indiana Chamber of Commerce, (ICC)
Stephen Loeschner, Citizen, (SL)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: Although this rule contains language that needs to be clarified, it is certainly better than the current rule, 326 IAC 6-4. I urge the board to adopt the rule language 326 IAC 6-4.5, as presented to the board. (SL)

Response: IDEM thanks commentor. IDEM agrees that 326 IAC 6-4.5 encompassed many of the ideas the department wished to address as to fugitive dust. However, the air pollution control board (APCB) has preliminarily readopted the rule as it is currently in effect. IDEM is considering, at this time, whether to propose any further changes to the rule prior to final adoption.

Comment: This rule is substantially expanded from the existing rule. We request that the board readopt the existing rule under the sunset provision. We also request that a workgroup process be pursued to ensure more discussion and public input on any expanded rule language. (BT) (CMA) (ELC) (GE) (ICC)

Response: The rule was preliminarily adopted as it is currently in effect. IDEM is considering, at this time, whether to propose any further changes to the rule prior to final adoption. If the department decides to propose additional changes, these comments will be considered at that time and discussed further with interested parties.

Comment: Define parameters for a visual violation. As U.S. EPA recognized in its 1975 response to the state rule, the language concerning visual violations is vague and ambiguous. At that time, U.S. EPA approved all of the current fugitive dust rule except for the visual violation language in Section 2(d). Although IDEM has indicated that no person has ever been cited based on a sole violation of the visual standard, in 25 years IDEM has made no effort to clarify the rule language. IDEM's response to comments regarding the visual violation language insures that IDEM inspectors will be certified in Method 9. Method 9 is an opacity certification and does not apply to the visual violation standard being proposed in the fugitive dust rule. We agree the rule would be significantly improved by including an opacity standard in the rule and propose developing a specific fugitive dust emission standard based on U.S. EPA's Method 22. (CMA) (GE)

Response: IDEM does not believe the rule should include an opacity standard for fugitive dust. The visible standard in the rule reflects the fact that any visible dust crossing the property line negatively impacts adjacent property owners. It may be possible to use Method 22 to determine a violation under the visibility standard, provided inspectors are trained in Method 9 for visual observation as well. However, Method 22 has a limitation in that it does not include emissions from stacks and vents. IDEM will consider further the suggestion to use Method 22 while it determines whether to propose revisions to the preliminarily readopted rule prior to final adoption.

Comment: Assessing a penalty based on the visual observation would be difficult. Rather than assessing a major penalty or fine, IDEM should use a visual observation as an opportunity to develop together with the company a reasonable corrective plan. (ICC)

Response: The proposed rule that was not preliminarily adopted by the board, 326 IAC 6-4.5, included a provision that would have accomplished what the commentor suggests. It would have required a fugitive dust control plan in lieu of enforcement when a fugitive dust violation occurs. However, under the current rule at 326 IAC 6-4-2(4), a violation of the rule by visible observation may be refuted by factual data expressed in 326 IAC 6-4-2(1-3). Therefore, a major fine or penalty may still be averted with other documentation.

Comment: Secondary deposition is a new concept in the rule language. There has not been enough time to discuss this language. It is being thrown into the mix and rushed through under the guise of the sunset provision, without allowing us to work with IDEM on any issues we may have. Is secondary deposition analysis used in other states' fugitive dust rules? (CMA) (ELC) (GE)

Comment: The proposed language concerning secondary deposition analysis does not contain any standard by which that new method of determining a violation exists. The way it is written, any substance falling on any property at any distance could become a violation of the fugitive dust rule. There is no standard by which a violation can be determined. IDEM has responded previously by referring to a document entitled "The Particle Atlas". The rule language includes no reference to that document as the source for determining a violation. (GE) (ICC) (SL)

Response: The rule was preliminarily adopted as it is currently in effect without the secondary deposition language. IDEM is considering at this time whether to propose any further changes to the rule prior to final adoption. If IDEM decides to propose secondary deposition analysis, these comments will be considered at that time and discussed further with interested parties.

Comment: Stack emissions should not be included in the fugitive dust rule. U.S. EPA does not include stack and point source emissions with fugitive dust emissions. We consider this double regulation since stack emissions are already subject to other emission limits and regulatory requirements. (CMA) (ELC) (GE)

Response: IDEM does not consider the fugitive dust rule to be a double regulation on stack emissions. As defined fugitive dust means, "the generation of particulate matter to the extent that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located." (326 IAC 6-4-1) This rule may address fugitive emissions regulated by other rules but, according to the definition, applies when a stack emission does not adequately disperse and crosses the property line.

Comment: As written, the adverse weather condition exception applies only during an upwind-downwind test. This language should be clarified. (CMA) (ELC) (GE)

Comment: IDEM goes beyond its existing authority by requiring a detailed control plan as the result of a single fugitive dust event. Although IDEM insists that a control plan may be as brief as one page, the rule language specifies the detailed information to be included in a control plan. Much of the information is unnecessary and should not be detailed in the rule. (ELC) (GE)

Comment: The section containing the histoplasmosis language is vague. It should also define specific parameters, such as volume or percentage of surface area. (SL)

Response: The above comments address 326 IAC 6-4.5. Because that rule was not preliminarily adopted by the APCB, these comments are now moot as to 326 IAC 6-4. However, IDEM is considering at this time whether to propose any further changes to the rule prior to final adoption. If the department decides to propose additional changes, these comments will be considered at that time and discussed further with interested parties.

Comment: By including ambiguities such as "every reasonable precaution," IDEM has significantly increased its authority, as well as its ability to respond to a fugitive dust problem. (CMA)(GE) (SL)

Response: This language was in the original rule that has now been preliminarily readopted by the board. Therefore, it is not an expansion of IDEM's current authority. IDEM welcomes suggestions to clarify this language.

Comment: The draft rule being proposed is not required by federal law. Most of the fugitive dust rule is a state-initiated creation. (CMA) (GE)

Response: Although the fugitive dust rule was created through a state-driven effort, portions of the rule are federally required and are part of Indiana's approved SIP for TSP. In addition, since fugitive dust is a localized air pollution issue it necessitates additional requirements to the national standards.

Comment: The fugitive dust rule has had no action or discussion on it for more than four years. The last comment period was in March 1997. Recent outreach efforts from IDEM have been through public meetings that focus on answering questions about the rule, rather than through workgroup meetings. (CMA) (GE)

Response: IDEM has gone beyond the requirements of the rulemaking process to engage interested parties in this rule. IDEM has the legal authority to implement these additional requirements. The department has gathered input to draft rule language through public meetings and formal comment periods. Upon request, the department has met individually with interested parties.

Comment: Fugitive dust should not be treated as an urgent health issue. There is no data to support fugitive dust as a public health issue. It is a nuisance issue only. (CMA) (GE)

Response: Fugitive dust is a real air quality issue for many citizens who expect the department to provide relief. IDEM has received an average of 120 fugitive dust complaints per year for the last six years. Through a fugitive dust rule, IDEM can provide the many citizens the relief they request.

326 IAC 6-4

SECTION 1. 326 IAC 6-4-1 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

Rule 4. Fugitive Dust Emissions

326 IAC 6-4-1 Applicability of rule
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 1. This rule (326 IAC 6-4) shall apply to all sources of fugitive dust. For the purposes of this rule (326 IAC 6-4), "fugitive dust" means the generation of particulate matter to the extent that some portion of the material escapes beyond the property line or boundaries of the property, right-of-way, or easement on which the source is located. *(Air Pollution Control Board; 326 IAC 6-4-1; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2499)*

SECTION 2. 326 IAC 6-4-2 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 6-4-2 Emission limitations
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 2. A source or sources generating fugitive dust shall be in violation of this rule (326 IAC 6-4) if any of the following criteria are violated:

(1) A source or combination of sources which cause to exist fugitive dust concentrations greater than sixty-seven percent (67%) in excess of ambient upwind concentrations as determined by the following formula:

$$P = \frac{100\ (R \& U)}{U}$$

P = Percentage increase

R = Number of particles of fugitive dust measured at downward receptor site

U = Number of particles of fugitive dust measured at upwind or background site

(2) The fugitive dust is comprised of fifty percent (50%) or more respirable dust, then the percent increase of dust concentration in subdivision (1) of this section shall be modified as follows:

$$P_R = (1.5 \pm N)\ P$$

Where:

N = Fraction of fugitive dust that is respirable dust.

P_R = Allowable percentage increase in dust concentration above background.

P = No value greater than sixty-seven percent (67%).

(3) The ground level ambient air concentrations exceed fifty (50) micrograms per cubic meter above background concentrations for a sixty (60) minute period.

(4) If fugitive dust is visible crossing the boundary or property line of a source. This subdivision may be refuted by factual data expressed in subdivisions (1), (2) or (3) of this section.

(Air Pollution Control Board; 326 IAC 6-4-2; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500)

SECTION 3. 326 IAC 6-4-3 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 6-4-3 Multiple sources of fugitive dust
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 3. (a) The allowable particles shall refer to the total of all particles leaving the boundaries or crossing the property lines of any source of fugitive dust regardless of whether from a single operation or a number of operations. If the source is determined to be comprised of two (2) or more legally separate persons, each shall be held proportionately responsible on the basis of contributions by each person as determined by microscopic analysis. In such cases, samples shall be taken downwind from the combination of sources and at the fence line of each source.

(b) No source which is contributing to a combined downwind fugitive dust concentration in excess of the limits of this rule (326 IAC 6-4) shall be required to reduce emissions if the concentrations at his property line are in compliance**,** unless all contributors are individually in compliance and a combined

fugitive dust concentration still exceeds the limits of this rule (326 IAC 6-4). Each source shall then be required to reduce its emissions by like percentages to achieve an acceptable combined downwind concentration.

(c) When all contributors are individually in compliance and no nuisance to the surrounding community is created, the commissioner may waive the requirement for further reduction in emissions by combined contributors. *(Air Pollution Control Board; 326 IAC 6-4-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500)*

SECTION 4. 326 IAC 6-4-4 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 6-4-4 Motor vehicle fugitive dust sources
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 4. No vehicle shall be driven or moved on any public street, road, alley, highway, or other thoroughfare, unless such vehicle is so constructed as to prevent its contents from dripping, sifting, leaking, or otherwise escaping therefrom so as to create conditions which result in fugitive dust. This section applies only to the cargo any vehicle may be conveying and mud tracked by the vehicle. *(Air Pollution Control Board; 326 IAC 6-4-4; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500)*

SECTION 5. 326 IAC 6-4-5 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 6-4-5 Measurement processes
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 5. (a) Particle quantities and sizes will be measured by manual microscopic analysis of a dustfall sample collected on a sticky slide, or by use of commercially available particle counting devices which count and classify particles by micron size range, or other methods acceptable to the commissioner.

(b) Ambient air concentrations shall be measured using the standard hi volume sampling and analysis techniques as specified by 40 C.F.R. 50*.

(c) Observations by a qualified representative of the commissioner of visible emissions crossing the property line of the source at or near ground level.

*Copies of the Code of Federal Regulations (C.F.R.) referenced may be obtained from the Government Printing Office, Washington, D.C. 20402. Copies are also available at the Department of Environmental Management, Office of Air Management, 105 South Meridian Street, Indianapolis, Indiana 46225. *(Air Pollution Control Board; 326 IAC 6-4-5; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2500; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1125)*

SECTION 6. 326 IAC 6-4-6 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 6-4-6 Exceptions
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 6. The following conditions will be considered as exceptions to this rule (326 IAC 6-4) and therefore not in violation:

(1) Release of steam not in combination with any other gaseous or particulate pollutants unless the condensation from said steam creates a nuisance or hazard in the surrounding community.

(2) Fugitive dust from publicly maintained unpaved thoroughfares where no nuisance or health hazard is created by its usage or where it is demonstrated to the commissioner that no means are available to finance the necessary road improvements immediately. A reasonable long-range schedule for necessary road improvements must be submitted to support the commissioner's granting such an exception.

(3) Fugitive dust from construction or demolition where every reasonable precaution has been taken in minimizing fugitive dust emissions.

(4) Fugitive dust generated from agricultural operations providing every reasonable precaution is taken to minimize emissions and providing operations are terminated if a severe health hazard is generated because of prevailing meteorological conditions.

(5) Visible plumes from a stack or chimney which provide adequate dispersion and are in compliance with other applicable rules.

(6) Fugitive dust from a source caused by adverse meteorological conditions.

(Air Pollution Control Board; 326 IAC 6-4-6; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2501)

SECTION 7. 326 IAC 6-4-7 IS BEING CONSIDERED FOR READOPTION AS FOLLOWS:

326 IAC 6-4-7 Compliance date
Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11
Affected: IC 13-1-1

Sec. 7. All sources must comply with this rule (326 IAC 6-4) as soon as practicable but no later than July 1, 1974. *(Air Pollution Control Board; 326 IAC 6-4-7; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2501)*

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 1, 2001 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on final adoption of proposed rule 326 IAC 6-4 concerning fugitive dust emissions.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed rule. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Chrystal Campbell, Rules Development Section, (317) 234-1203 or (800) 451-6027, press 0, and ask for extension 4-1203 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-1785. TDD: (317) 232-6565. Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Janet G. McCabe
Assistant Commissioner
Office of Air Management

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #00-173

DIGEST

Amends 329 IAC 7-2-6, 329 IAC 7-11-1, 329 IAC 7-11-2, 329 IAC 7-11-3 with a new maximum score of 10 to be eligible for deletion from the Commissioner's Bulletin and adds designations that can be attained for consideration for deletion. Senate Enrolled Act 360-1997 required rules be adopted by the solid waste management board to amend 329 IAC 7 concerning the Indiana Scoring Model and assessment of hazardous substance response sites and determine a maximum score to allow sites that either have been the subject of a successful remediation or score at or below the maximum score to be removed from the priority ranking if appropriate. A procedure for deleting a listed site from the priority ranking and a maximum score was established by LSA #98-110(F), which was effective November 27, 1998. A maximum score of 5 was established. The procedures allowed for either a site to petition for deletion or for the agency to initiate deletion of a site. After consideration of all sites on the list, it was determined by the agency that this maximum score is inadequate to appropriately delete all the sites that have been the subject of a successful remediation. There are sites that pose no risk to human health or the environment but still accrue a score greater than 5. The department would like to again examine the maximum score for a site to be removed from the priority ranking and, in addition, the department would also like to consider criteria or other approvals (designations) to be applied to a remediated site to determine appropriateness for that site to be deleted from the list. The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at 329 IAC 7 concerning the Indiana Scoring Model and the assessment of hazardous substance response sites. Effective 30 days after filing with the secretary of state.

HISTORY

First Notice of Comment Period: September 1, 2000, Indiana Register (23 IR 3220).

Second Notice of Comment Period and Notice of First Hearing: January 1, 2001, Indiana Register (24 IR 1179).

Date of First Hearing: April 17, 2001.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4, until the board has conducted a third comment period that is at least twenty-one (21) days long.

Because this proposed rule is not substantively different from the draft rule published on January 1, 2001, at 24 IR 1179, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from January 1, 2001, through February 1, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Mark Shere, Bethlehem Steel Corporation (MS)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: First, I am writing on behalf of Bethlehem Steel to express the company's support for IDEM's proposed rule regarding revisions to its scoring model for hazardous waste sites, which appears under the title "Development of Amendments to Rules Concerning the Indiana Scoring Model and Assessment of Hazardous Substance Response Sites." 24 IND. 1179 (January 1, 2001) (MS)

Response: Thank you for your support. IDEM believes that this rule will clarify which facilities can be deleted from the commissioner's bulletin and allow sites that don't require further remediation to be deleted.

Comment: Second, I want to thank the agency for its favorable response to my prior comment letter (September 29, 2000) on this

proposed rule. That letter recommended that facilities should be removed from the state's priority list following clean up under RCRA corrective action. The agency incorporated this point, and expanded it in a clear manner to encompass other types of clean up work as well. (MS)

Response: IDEM believes that the addition of the language does complement the approach we are taking to delete facilities from the commissioner's bulletin.

Comment: Third, I would like to suggest some additional language for IDEM's consideration, which may make the new provisions regarding clean ups more practical and effective. As currently proposed, the rule provides that a site may be deleted from the priority list upon a determination that "no further action is necessary" under RCRA corrective action. For many facilities that pose no priority in terms of environmental risk, U.S. EPA is unlikely to issue "no further action" decisions for many years. Instead, the EPA and IDEM have established a formal process for determining compliance with two key "Environmental Indicators": (1) Current Human Exposures under Control and (2) Migration of Contaminated Groundwater under Control. A site that meets these Environmental Indicators may still require additional remediation or monitoring to provide full protection against potential long-term exposures. At the same time, it is clear that such a site is no longer a hazardous waste "priority." For these reasons, IDEM's proposed rule on scoring model revisions will be more effective if it incorporates language to remove sites from the state priority list based on compliance with the Environmental Indicators. Possible language to make this change follows:

329 IAC 7-2-6 Assessment of hazardous substance response sites

Sec. 6. A site may be deleted from the commissioner's bulletin through an agency or petition deletion procedure if the site complies with one (1) of the following:…

(2)(B) A letter of determination from the department or the United States Environmental Protection Agency, following investigation and remediation performed under the Resource Conservation and Recovery Act, states that (i) no further action is necessary for releases of hazardous wastes or hazardous constituents following investigation and remediation performed under the Resource Conservation and Recovery Act, or (ii) current human exposures and migration of contamination groundwater at the site are both under control. (MS)

Response: IDEM's approach to site status or priority designations differs considerably from that proposed in the comment. IDEM utilizes environmental indicators to measure progress toward achieving a goal or endpoint, in this case, eventual site remediation or temporal disposition. IDEM does believe that careful characterization whether completed expeditiously or after "many years" is prudent, but does not believe the use of indicators as endpoints is acceptable. No change was made.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On April 17, 2001, the solid waste management board (board) conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 7.

No comments were made at the first hearing.

FISCAL ANALYSIS PREPARED BY THE LEGISLATIVE SERVICES AGENCY

IDEM has estimated that the economic impact of this rule will be less than five hundred thousand dollars ($500,000) on the regulated entities. The proposed rule was not submitted to the Legislative Services Agency for analysis under IC 4-22-2-28.

329 IAC 7-2-6 329 IAC 7-11-2
329 IAC 7-11-1 329 IAC 7-11-3

SECTION 1. 329 IAC 7-2-6 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-2-6 Assessment of hazardous substance response sites

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 6. ~~Sites that receive a score of five (5) or less~~ **A site** may be deleted from the commissioner's bulletin through an agency or petition deletion procedure **if the site complies with one (1) of the following:**

(1) Received a score of ten (10) or less.

(2) A comprehensive site clean-up has been completed so that the site is no longer a significant threat to human health and the environment and one (1) of the following has been issued concerning the site:

(A) A letter from the department's leaking underground storage tank section that states no further action is necessary.

(B) A letter of determination from the department or the United States Environmental Protection Agency that states no further action is necessary for releases of hazardous wastes or hazardous constituents following investigation and remediation performed under the Resource Conservation and Recovery Act.

(C) A certificate of completion and a covenant not to sue from the department's voluntary remediation program section.

(D) A record of decision or declaration of closure from the department's state clean-up program section that states no further action is necessary.

(E) Designation in the United States Environmental Protection Agency's Comprehensive Environmental Response Compensation Liability Act data base of "No Further Remedial Action Planned Priority Assessment".

(Solid Waste Management Board; 329 IAC 7-2-6; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 2. 329 IAC 7-11-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-11-1 Deletion procedure agency deletion

Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 1. Procedures for deleting sites from the commissioner's bulletin by agency deletion are as follows:

(1) Sites must have been evaluated using the Indiana Scoring Model and received a score of ~~five (5)~~ **ten (10)** or less **or be eligible for deletion under 329 IAC 7-2-6(2).**

(2) The commissioner shall notice the local or county health or environmental agency of the proposed agency deletion. The notice shall include the following:
(A) Name.
(B) Location.
(C) Property legal description.
(D) Current owners or operators.
(E) Property ownership.
(F) Operation history.
(G) A comprehensive summary that includes:
(i) the current site conditions; and
(ii) an explanation that these current site conditions do not pose a significant environmental concern.
(3) The commissioner shall solicit a correspondence regarding the proposed agency deletion from the:
(A) local officials;
(B) county health department; or
(C) environmental agency.
(4) The commissioner shall provide the following as necessary:
(A) Answers to any public comments received.
(B) A forum for public meetings.
(5) The commissioner will consider comments received from the:
(A) public;
(B) county commissioners;
(C) town board; or
(D) mayor's office.
(6) Forty-five (45) days after initiation of agency deletion procedures, the commissioner will notify interested parties, if the site will be deleted from the commissioner's bulletin.

(Solid Waste Management Board; 329 IAC 7-11-1; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 3. 329 IAC 7-11-2 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-11-2 Deletion procedures; petition deletion
Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 2. Procedures for deleting sites from the commissioner's bulletin by petition deletions are as follows:
(1) Sites must have been evaluated using the Indiana Scoring Model and received a score of ~~five (5)~~ **ten (10)** or less **or be eligible for deletion under 329 IAC 7-2-6(2)**.
(2) The commissioner must receive a petition for deleting a site from the commissioner's bulletin. The petition correspondence must include the following:
(A) Name.
(B) Location.
(C) Property legal description.
(D) Current owners or operators.
(E) Property ownership.
(F) Operational history records relating to the hazardous waste activities.
(G) A comprehensive summary that includes:
(i) the current site conditions; and
(ii) an explanation that these current site conditions do not pose a significant environmental concern.
(H) Correspondence from the:
(i) local officials;
(ii) county health department; or
(iii) environmental agency;
delineating their position on the proposed deletion.
(3) The commissioner shall provide the following as necessary with petitioner's participation:
(A) Public hearings.
(B) Public meetings.
(C) Information necessary to answer public comments.
(4) The commissioner will consider comments received from the:
(A) public;
(B) county commissioners;
(C) town board; or
(D) mayor's office.
(5) The commissioner will notify all interested parties, within forty-five (45) days after complete and adequate petition correspondence is received by the commissioner, if the site will be deleted from the commissioner's bulletin.

(Solid Waste Management Board; 329 IAC 7-11-2; filed Oct 28, 1998, 3:26 p.m.: 22 IR 753; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 4. 329 IAC 7-11-3 IS AMENDED TO READ AS FOLLOWS:

329 IAC 7-11-3 Deletion procedures; site relisted
Authority: IC 13-14-8; IC 13-14-9; IC 13-19-3; IC 13-25-4-7
Affected: IC 13-22-2

Sec. 3. Sites may be deleted from the commissioner's bulletin if the site scores a score of ~~five (5)~~ **ten (10)** or less **or is eligible for deletion under 329 IAC 7-2-6(2).** Sites that are deleted, which subsequently receive a score higher than ~~five (5) will~~ **ten (10), may** be relisted on the commissioner's bulletin **if new information becomes available to indicate that site conditions have changed and the site warrants reevaluation**.

(Solid Waste Management Board; 329 IAC 7-11-3; filed Oct 28, 1998, 3:26 p.m.: 22 IR 754; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

Notice of Public Hearing

Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on August 21, 2001 at 1:30 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana the Solid Waste Management Board will hold a public hearing on proposed amendments to 329 IAC 7.

The purpose of this hearing is to receive comments from the public prior to final adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed

amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Lynn West, Rules, Outreach and Planning section, Office of Land Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor, Indianapolis, Indiana, (317) 232-3593 or (800) 451-6027 (in Indiana).

If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-1785 (V) or (317) 233-6087 (TT). Speech and hearing impaired callers may also contact the agency via the Indiana Relay Service at (800) 743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Land Quality, Indiana Government Center-North, 100 North Senate Avenue, Eleventh Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bruce Palin
Deputy Assistant Commissioner
Office of Land Quality

TITLE 345 INDIANA STATE BOARD OF ANIMAL HEALTH

Proposed Rule
LSA Document #01-1

DIGEST

Amends 345 IAC 1-5 to allow dogs and cats to be vaccinated for rabies every three years under certain circumstances. The rule amends requirements for rabies vaccination of dogs, cats, and ferrets. Makes other changes in the law of rabies control. Effective 30 days after filing with the secretary of state.

345 IAC 1-5-1
345 IAC 1-5-2
345 IAC 1-5-3

SECTION 1. 345 IAC 1-5-1 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-5-1 Rabies vaccination
Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-6

Sec. 1. **(a)** For the purpose of administering ~~the rabies control law, an animal~~ **IC 15-2.1-6 and this rule, an animal** is deemed to be **vaccinated for** rabies ~~immunized~~ only when the following provisions are met:

(1) The animal ~~must be~~ **is** vaccinated by a **veterinarian that is:**
(A) licensed **to practice veterinary medicine in Indiana;** and
(B) accredited ~~veterinarian.~~ **by the United States Department of Agriculture under 9 CFR, Subchapter J.**

(2) The vaccine used must be licensed and approved by the United States Department of Agriculture. The dosage and administration of ~~either a modified live virus or inactivated~~ **the** vaccine **used** must be in accordance with this rule and the manufacturers' ~~recommendations.~~ **specifications described on the vaccine's label and package insert.**

~~(2)~~ **(b)** The ~~licensed and accredited~~ veterinarian performing ~~such~~ **a rabies** vaccination **of an animal** shall do the following:

~~(A) Furnish an antirabies vaccination identification tag with the veterinarian's or clinic's name and telephone number to the owner or custodian of the animal.~~

~~(B)~~ **(1)** Complete a vaccination certificate or computerized record, in triplicate, on ~~the~~ **each** animal being vaccinated for rabies **that shall include the following information:**

(A) The name and address of the animal's owner.
(B) The species, sex, and age of the animal vaccinated.
(C) The date the animal was vaccinated.
(D) The product name and lot number of the vaccine used.
(E) The date the animal must be revaccinated under section 2 of this rule.
(F) The number of the tag issued if a tag is issued under subdivision (3).
(G) The name of the veterinarian completing the vaccination and his or her Indiana veterinary license number.

(2) The rabies vaccination certificate completed under subdivision (1) shall be distributed as follows:

~~(i)~~ **(A)** One (1) copy of the certificate or computerized record shall be given to the owner or custodian of the animal being vaccinated for rabies.

~~(ii)~~ **(B)** One (1) copy of the certificate or computerized record shall be forwarded to the county health officer or **the officer's** designated agent upon **the county health officer's** request, or as ~~otherwise directed by~~ the state veterinarian **otherwise directs,** within thirty (30) days of the vaccination.

~~(iii)~~ **(C)** One (1) copy of the certificate or computerized record shall be retained by the veterinarian vaccinating such animal covering the period of immunization.

(3) **A veterinarian that vaccinates a dog, cat, or ferret shall furnish to the owner or custodian of the animal a**

rabies vaccination identification tag that contains the following:

(A) The veterinarian's or clinic's name and telephone number.

(B) A unique identification number.

(c) The owner or custodian of an animal vaccinated for rabies shall keep a copy of the certificate and tag required to be issued under subsection (b) until such time as the animal must be revaccinated under section 2 of this rule. The board recommends that the ~~animal~~ owner or custodian ~~shall~~ **of a dog** affix ~~such~~ **the rabies vaccination** tag to the collar or harness of ~~each animal, where it shall~~ **the dog and that it** be worn at all times. **Nothing in this rule shall prevent a local unit of government from requiring that rabies vaccination tags be worn at all times.**

~~Immunized~~ **(d)** Animals **that have been vaccinated for rabies** are subject to all quarantine provisions ~~which~~ **that** may be imposed by state or local regulations. The final determination of an animal's rabies **vaccination** status shall be made by the state veterinarian. *(Indiana State Board of Animal Health; Reg 57-2, Title 1; filed Jun 4, 1958, 3:30 p.m.: Rules and Regs. 1959, p. 284; filed Jan 20, 1988, 4:05 p.m.: 11 IR 1740; filed Oct 23, 1989, 5:00 p.m.: 13 IR 383; filed Jun 14, 1995, 3:30 p.m.: 18 IR 2759) NOTE: Originally adopted by the Indiana State Livestock Sanitary Board. Name changed by Acts 1969, Ch. 81, Sec. 1.*

SECTION 2. 345 IAC 1-5-2 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-5-2 Required rabies vaccination of dogs, cats, and ferrets

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-6

Sec. 2. All dogs, cats, and ferrets three (3) months of age and older must be vaccinated ~~annually~~ against rabies. ~~with~~ **The rabies vaccination of** a ~~licensed and approved vaccine administered by a licensed, accredited veterinarian.~~ **dog, cat, and ferret shall be maintained by ongoing revaccination of the animal as follows:**

(1) Ferrets shall be revaccinated within twelve (12) months of the prior vaccination.

(2) Dogs and cats that are vaccinated with a rabies vaccine whose label recommends annual boosters shall be revaccinated within twelve (12) months of the prior vaccination.

(3) Dogs and cats that are vaccinated with a rabies vaccine whose label recommends a booster one year later and triennially thereafter, shall be revaccinated within twelve (12) months of the first vaccination, and shall be revaccinated within thirty-six (36) months of each vaccination thereafter.

The owner of the animal is responsible for procuring the vaccinations required by this section. *(Indiana State Board of Animal Health; 345 IAC 1-5-2; filed Jun 14, 1995, 3:30 p.m.: 18 IR 2760; filed Jun 17, 1998, 9:03 a.m.: 21 IR 4204)*

SECTION 3. 345 IAC 1-5-3 IS AMENDED TO READ AS FOLLOWS:

345 IAC 1-5-3 Animal rabies control program

Authority: IC 15-2.1-3-19
Affected: IC 15-2.1-3-13; IC 15-2.1-6

Sec. 3. (a) A statewide animal rabies control program is established. The state veterinarian shall implement the rabies control program.

(b) The Compendium of Animal Rabies Control, ~~1999,~~ **2001,** National Association of State Public Health Veterinarians, Inc., is hereby incorporated by reference as a rule of the Indiana state board of animal health and shall be used in the implementation of the program established under subsection (a), provided, however, the following shall apply:

(1) References to preexposure or postexposure treatment of humans are recommendations from the National Association of State Public Health Veterinarians and are not requirements of the Indiana state board of animal health.

(2) Part III(B)(2) concerning stray dogs, cats, and ferrets is a recommendation but not a requirement of the Indiana state board of animal health.

(3) Part III(B)(4) is not incorporated.

(4) Part III(C) is not a requirement of the Indiana state board of animal health.

(c) Where the matters incorporated by reference in this section conflict with the provisions of IC 15-2.1-6 and this rule, the express provisions of **the** statute and this rule shall control. *(Indiana State Board of Animal Health; 345 IAC 1-5-3; filed Jun 14, 1995, 3:30 p.m.: 18 IR 2760; filed Dec 10, 1997, 11:00 a.m.: 21 IR 1327; filed Jun 17, 1998, 9:03 a.m.: 21 IR 4205; filed Mar 23, 2000, 4:24 p.m.: 23 IR 1913)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 25, 2001 at 10:00 a.m., at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50, Indianapolis, Indiana the Indiana State Board of Animal Health will hold a public hearing on proposed amendments to rules concerning rabies vaccination of dogs, cats, and ferrets. Copies of these rules are now on file at the Indiana State Board of Animal Health, 805 Beachway Drive, Suite 50 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Bret D. Marsh, D.V.M.
Indiana State Veterinarian
Indiana State Board of Animal Health

TITLE 355 STATE CHEMIST OF THE STATE OF INDIANA

Proposed Rule
LSA Document #01-71

DIGEST

Amends 355 IAC 4-2 to add a definition of registered technician and written instructions for a registered technician, clarify that a noncertified person using pesticides under the off-site supervision of a certified applicator must be a registered technician, establish a limit on the number of register technicians to be supervised by a certified applicator, and establish the requirements to become registered and reregistered as a technician. Effective 30 days after filing with the secretary of state.

355 IAC 4-2-1	**355 IAC 4-2-5**
355 IAC 4-2-2	**355 IAC 4-2-6**
355 IAC 4-2-3	**355 IAC 4-2-7**
355 IAC 4-2-4	**355 IAC 4-2-8**

SECTION 1. 355 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-1 Definitions
Authority: IC 15-3-3.5-11; IC 15-3-3.6-4; IC 15-3-3.6-10.1
Affected: IC 15-3-3.6-2

Sec. 1. **The following** definitions **apply throughout this rule:**

~~(a) The term~~ **(1)** "Competent person" ~~shall mean (1)~~ **means** a person ~~with~~ **who:**

(A) has the ability to read and comprehend written instructions, including the text of pesticide labels; ~~and~~

~~(2) A person~~ **(B) is sixteen** (16) years of age or over; **and**

(C) is a registered technician.

~~(b) The term~~ **(2)** "Direct supervision" ~~shall mean:~~ **means either of the following:**

~~(1)~~ **(A)** The physical presence of the supervising certified applicator at the work site under circumstances ~~which~~ **that** permit continuous direct voice contact with the noncertified ~~applicator;~~ ~~or~~ **individual.**

~~(2)~~ **(B) The supervising certified applicator has provided the noncertified competent person the following:**

(i) Written ~~or otherwise verifiable~~ instructions covering ~~(A) General and~~ site specific precautions to prevent injury to persons **or the environment** or damage to property.

~~(B) The mixing, handling, application and disposal and onsite storage of the pesticide.~~

(ii) A copy of the labels of all pesticide products to be used.

~~(C)~~ **(iii)** The ~~establishment of~~ **means and instructions to establish** direct voice communication **during the use of the pesticide** with the supervising certified applicator. ~~while the application of the pesticide is in progress.~~

(iv) All personal protective equipment and instructions on proper use required by the labels of the pesticide products for the uses being performed.

(3) "Registered technician" means a noncertified person who, having met the requirements of section 8 of this rule, is registered by the state chemist and thereby is authorized to engage in pesticide use and related activities while working under the direct supervision of a certified applicator.

~~(c) The term~~ **(4)** "Work site" ~~shall mean and include~~ **means** any location at which pesticides are ~~handled, mixed, stored, disposed, applied or~~ used **as defined in IC 15-3-3.6-2(37).**

(5) "Written instructions" means a written or printed site assessment fact sheet or similar document that shall be reviewed by the noncertified applicator prior to each pesticide application. The required elements on the site assessment fact sheet must be industry specific and developed by the state chemist in consultation with the appropriate certified applicator industry.

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 1; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 442; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1191)

SECTION 2. 355 IAC 4-2-2 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-2 Pesticide use by noncertified persons
Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6-7

Sec. 2. Pesticides may be ~~applied~~ **used** by a noncertified person ~~if that person is a competent person~~ working under the direct supervision of a certified applicator. ~~as defined herein. Since it is not considered practicable to supervise an unaccompanied agricultural aircraft pilot,~~ All ~~such~~ persons ~~engaged in the business~~ **conducting use** of ~~applying~~ pesticides for hire **by aerial application** shall be certified. *(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 2; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 443; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192)*

SECTION 3. 355 IAC 4-2-3 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-3 On-site supervision of use
Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6

Sec. 3. The supervising certified applicator shall be physically present as defined in section ~~1(b)(1)~~ **1(2)(A) of this rule** if:

~~(a)~~ **(1)** the label of the pesticide being ~~applied~~ **used** so stipulates; ~~or~~

~~(b)~~ **(2)** the noncertified ~~applicator~~ **individual** has had no prior experience with either the pesticide or the application methodology in use; **or**

(3) the noncertified individual is not competent as defined in section 1(1) of this rule.

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 3; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 443; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192)

SECTION 4. 355 IAC 4-2-5 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-5 Applicability of supervision requirements
Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6

Sec. 5. The requirements for ~~site awareness and~~ direct supervision of noncertified ~~applicators as defined herein~~ **individuals** shall apply to **the following:**

~~All applications~~ **(1) Use** of all pesticides ~~to the property of another~~ by ~~licensed and certified operators and/or licensed for hire applicators and to~~ **any person required by IC 15-3-3.6 to be licensed as one (1) of the following:**

(A) A pesticide business.

(B) A for-hire applicator.

(C) A not-for-hire applicator.

(D) A public applicator.

~~All applications~~ **(2) Use** of **restricted use** pesticides**.** ~~for restricted uses by licensed not for hire applicators, licensed public applicators and private applicators.~~

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 5; filed Aug 3, 1976, 4:10 p.m.: Rules and Regs. 1977, p. 443; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192)

SECTION 5. 355 IAC 4-2-6 IS AMENDED TO READ AS FOLLOWS:

355 IAC 4-2-6 Certified and noncertified applicators' responsibilities
Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6

Sec. 6. **Certified supervising applicators and noncertified individuals shall be responsible for the following:**

(1) A certified supervising applicator shall provide **the items listed in section 1(2)(B) of this rule** to the noncertified ~~applicator written or otherwise verifiable instructions as defined in Section 1(b)(2).~~ **individual.**

(2) A noncertified ~~applicator~~ **individual** shall: ~~follow the label directions and~~

(A) be in possession of the items listed in section 1(2)(B) of this rule;

(B) carry out the instructions of the supervising certified applicator; ~~while at the work site.~~ **and**

(C) upon request, produce the items listed in section 1(2)(B) of this rule for inspection by the state chemist.

(State Chemist of the State of Indiana; Pesticide Use & Application Reg 2, Sec 6; filed Apr 21, 1982, 3:45 p.m.: 5 IR 1192)

SECTION 6. 355 IAC 4-2-7 IS ADDED TO READ AS FOLLOWS:

357 IAC 4-2-7 Limit on number of noncertified individuals to be supervised
Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6

Sec. 7. (a) A certified applicator providing direct supervision as described in section 1(2)(B) of this rule may supervise no more than ten (10) noncertified individuals unless an emergency exemption as provided in subsection (b) has been granted by the state chemist.

(b) A certified applicator may apply for and the state chemist may grant an emergency exemption for up to sixty (60) days from the date of application by the certified applicator to allow for temporary supervision of more than ten (10) noncertified individuals.

(c) The state chemist will determine if the emergency exemption as applied for is justifiable and reasonable to grant. *(State Chemist of the State of Indiana; 355 IAC 4-2-7)*

SECTION 7. 355 IAC 4-2-8 IS ADDED TO READ AS FOLLOWS:

355 IAC 4-2-8 Technician registration requirements
Authority: IC 15-3-3.5-11; IC 15-3-3.6-4
Affected: IC 15-3-3.6-12.1

Sec. 8. (a) To become a registered technician, an individual must do the following:

(1) Pass the commercial applicator core examination described in 355 IAC 4-1-2.1(b) or, if a turf technician, pass either the core examination or the registered technician examination described in 355 IAC 4-6-4.

(2) Submit an applicator on a form provided by the state chemist. This form must be signed by both the application and the responsible certified applicator employed at the applicant's business location.

(3) Submit the thirty dollar ($30) technician registration fee.

(b) Registration shall remain in force from the date of passing the examination through December 31 of the fourth year following the year during which the examination was passed unless revoked or suspended.

(c) The registration period may be extended indefinitely for an additional five (5) years if the registered technician accumulates at least eight (8) continuing registration credits by attending at least two (2) state chemist approved continuing registration programs while the registration is in force.

(d) Annual registration credentials shall expire on December 31 unless renewed by a payment of a thirty dollar ($30) renewal fee by that date. Renewal after Decem-

ber 31 shall include a late fee of thirty dollars ($30) as established by IC 15-3-3.6-12.1 in addition to the thirty dollar ($30) renewal fee.

(e) The registration credential shall be in the possession of the registered technician at all times the technician is at a work site as defined in section 1(4) of this rule. *(State Chemist of the State of Indiana; 355 IAC 4-2-8)*

SECTION 8. 355 IAC 4-2-4 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 29, 2001 at 9:00 a.m., at the Office of the Indiana State Chemist, Purdue University, 1154 Biochemistry, Room A151, West Lafayette, Indiana the State Chemist of the State of Indiana will hold a public hearing on proposed amendments to add a definition of registered technician and written instructions for a registered technician, clarifiy that a noncertified person using pesticides under the off-site supervision of a certified applicator must be a registered technician, establish a limit on the number of register technicians to be supervised by a certified applicator, and establish the requirements to become registered and reregistered as a technician. Copies of these rules are now on file at the State Chemist of the State of Indiana, Purdue University, 1154 Biochemistry Building, West Lafayette and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

David Scott
Pesticide Administrator
State Chemist of the State of Indiana

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Proposed Rule
LSA Document #01-7

DIGEST

Adds 410 IAC 7-21 to safeguard public health and assure that food provided to consumers is safe, unadulterated, and honestly presented. The rule will establish minimum sanitary standards for the operation of wholesale food establishments, which include manufacturers, processors, repackagers, and distributors of food, excluding meat and poultry processors regulated under IC 15-2.1-24; dairy processors, regulated under IC 15-2.1-22, IC 15-2.1-23, and 345 IAC 8; and shell egg plants regulated under 370 IAC 1-10-1 and IC 16-42-11. Effective 120 days after filing with the secretary of state.

410 IAC 7-21

SECTION 1. 410 IAC 7-21 IS ADDED TO READ AS FOLLOWS:

Rule 21. Wholesale Food Establishment Sanitation Requirements

410 IAC 7-21-1 Applicability
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 1. The definitions in this rule apply throughout this rule. *(Indiana State Department of Health; 410 IAC 7-21-1)*

410 IAC 7-21-2 "Acid foods" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 2. "Acid foods" means foods that have a natural pH of 4.6 or below. *(Indiana State Department of Health; 410 IAC 7-21-2)*

410 IAC 7-21-3 "Acidified foods" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 3. (a) "Acidified foods" means low-acid foods to which acid or acid food is added; these foods include, but are not limited to:
(1) beans;
(2) cucumbers;
(3) cabbage;
(4) artichokes;
(5) cauliflower;
(6) puddings;
(7) peppers;
(8) tropical fruits; and
(9) fish;
singly or in any combination. They have a water activity (a_w) greater than eighty-five hundredths (0.85) and have a finished equilibrium pH of 4.6 or below. These foods may be called pickled, such as "pickled cauliflower".

(b) Excluded from the definition of acidified foods are:
(1) carbonated beverages;
(2) jams;
(3) jellies;
(4) preserves; and
(5) acid foods;
(including such foods as standardized and nonstandardized food dressings and condiment sauces) that contain small amounts of low-acid food and have a resultant finished equilibrium pH that does not significantly differ from that of the predominant acid or acid food, and foods that are stored, distributed, and retailed under refrigeration. *(Indiana State Department of Health; 410 IAC 7-21-3)*

410 IAC 7-21-4 "Adequate" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 4. "Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practice. *(Indiana State Department of Health; 410 IAC 7-21-4)*

410 IAC 7-21-5 "Adulterated" defined
Authority: IC 16-42-5-5
Affected: IC 16-42

Sec. 5. "Adulterated" has the meaning set forth under IC 16-42-1 through IC 16-42-4. *(Indiana State Department of Health; 410 IAC 7-21-5)*

410 IAC 7-21-6 "Allergen" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 6. "Allergen" means foods that are commonly known to cause serious allergenic responses, including, but not limited to, the following:
(1) Milk.
(2) Eggs.
(3) Fish.
(4) Crustacea.
(5) Mollusks.
(6) Tree nuts.
(7) Wheat.
(8) Legumes, particularly peanuts and soybeans.
(Indiana State Department of Health; 410 IAC 7-21-6)

410 IAC 7-21-7 "Batter" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 7. "Batter" means a semifluid substance, usually composed of flour and other ingredients, into which principal components of food are dipped or with which they are coated, or which may be used directly to form bakery foods. *(Indiana State Department of Health; 410 IAC 7-21-7)*

410 IAC 7-21-8 "Blanching" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 8. "Blanching", except for tree nuts and peanuts, means a prepackaging heat treatment of foodstuffs for a sufficient time and at a sufficient temperature to partially or completely inactivate the naturally occurring enzymes and to affect other physical or biochemical changes in the food. *(Indiana State Department of Health; 410 IAC 7-21-8)*

410 IAC 7-21-9 "Bottled drinking water" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 9. "Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water. *(Indiana State Department of Health; 410 IAC 7-21-9)*

410 IAC 7-21-10 "CFR" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 10. "CFR" means the Code of Federal Regulations. *(Indiana State Department of Health; 410 IAC 7-21-10)*

410 IAC 7-21-11 "CIP system" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 11. "CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning. The term does not include the cleaning of equipment, such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system. *(Indiana State Department of Health; 410 IAC 7-21-11)*

410 IAC 7-21-12 "Critical control point" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 12. "Critical control point" means a point or procedure in a specific food process where loss of control may result in an unacceptable health risk. *(Indiana State Department of Health; 410 IAC 7-21-12)*

410 IAC 7-21-13 "Department" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 13. "Department" means the Indiana state department of health or its authorized representative. *(Indiana State Department of Health; 410 IAC 7-21-13)*

410 IAC 7-21-14 "Drinking water" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 14. "Drinking water" means water that meets the requirements of 327 IAC 8. The term is traditionally known as potable water. The term includes water, except where the term used connotes that the water is not potable, such as boiler water, mop water, wastewater, and nondrinking water. *(Indiana State Department of Health; 410 IAC 7-21-14)*

410 IAC 7-21-15 "Food" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 15. "Food" means the following:
(1) All articles used for food, drink, confectionery, or

condiment whether simple, mixed, or compound.

(2) All substances or ingredients used in the preparation of the items described in subdivision (1).

(Indiana State Department of Health; 410 IAC 7-21-15)

410 IAC 7-21-16 "Food-contact surface" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 16. "Food-contact surface" means a surface of equipment or a utensil:

(1) with which food normally comes into contact; or

(2) from which food may drain, drip, or splash into a food, or onto a surface normally in contact with food.

(Indiana State Department of Health; 410 IAC 7-21-16)

410 IAC 7-21-17 "Food employee" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 17. "Food employee" means an individual working with food, food equipment or utensils, or food-contact surfaces. *(Indiana State Department of Health; 410 IAC 7-21-17)*

410 IAC 7-21-18 "HACCP plan" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 18. "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods. *(Indiana State Department of Health; 410 IAC 7-21-18)*

410 IAC 7-21-19 "Lot" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 19. "Lot" means the food produced during a period of time indicated by a specific code. *(Indiana State Department of Health; 410 IAC 7-21-19)*

410 IAC 7-21-20 "Low-acid food" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 20. "Low-acid food" means any food, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity (a_w)greater than eighty-five hundredths (0.85). *(Indiana State Department of Health; 410 IAC 7-21-20)*

410 IAC 7-21-21 "Microorganisms" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 21. "Microorganisms" means yeasts, molds, bacteria, protozoa, and viruses and includes, but is not limited to, species having public health significance. The term "undesirable microorganisms" includes those microorganisms that are of public health significance and those of nonpublic health significance that result in food spoilage or that indicate that food is contaminated with filth, or that otherwise may cause food to be adulterated. "Microbial" is used in some instances instead of using an adjectival phrase containing the word microorganism. *(Indiana State Department of Health; 410 IAC 7-21-21)*

410 IAC 7-21-22 "Pest" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 22. "Pest" refers to any objectionable animals or insects, including, but not limited to, the following:

(1) Birds.

(2) Rodents.

(3) Flies.

(4) Larvae.

(Indiana State Department of Health; 410 IAC 7-21-22)

410 IAC 7-21-23 "pH" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 23. "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero (0) and seven (7) indicate acidity, and values between seven (7) and fourteen (14) indicate alkalinity. The value for pure distilled water is seven (7), which is considered neutral. *(Indiana State Department of Health; 410 IAC 7-21-23)*

410 IAC 7-21-24 "Plant" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 24. "Plant" means the building or facility or parts thereof, used for or in connection with the manufacturing, packaging, labeling, holding, or storing of human food. *(Indiana State Department of Health; 410 IAC 7-21-24)*

410 IAC 7-21-25 "Potentially hazardous food" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 25. (a) "Potentially hazardous food" means a natural or synthetic food and requires temperature control because it is in a form capable of supporting any of the following:

(1) The rapid and progressive growth of infectious or toxigenic microorganisms.

(2) The growth and toxin production of Clostridium botulinum.

(3) In raw shell eggs, the growth of Salmonella enteritidis.

(b) The term includes the following:

(1) A food of animal origin that is raw or heat-treated.

(2) A food of plant origin that is heat-treated or consists of raw seed sprouts.
(3) Cut melons.
(4) Garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth as specified under subsection (a).

(c) The term does not include any of the following:
(1) An air-cooled hard-boiled egg with shell intact.
(2) A food with a water activity (a_w) value of eighty-five hundredths (0.85) or less.
(3) A food with a pH level of four and six-tenths (4.6) or below when measured at seventy-five (75) degrees Fahrenheit.
(4) A food, in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.
(5) A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of Salmonella enteritidis in eggs or Clostridium botulinum cannot occur, such as a food that:
(A) has an a_w and a pH that are above the levels specified under subdivisions (2) and (3); and
(B) may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.
(6) A food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified under subsection (a).
(Indiana State Department of Health; 410 IAC 7-21-25)

410 IAC 7-21-26 "Public health significance" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 26. "Public health significance" means:
(1) the potential for causing diseases with symptoms, such as, but not limited to:
(A) diarrhea;
(B) fever;
(C) jaundice;
(D) vomiting or sore throat with fever; or
(E) boils; or
(2) for diseases such as, but not limited to:
(A) Salmonella spp.;
(B) Shigella spp.;
(C) Escherichia coli 0157:H7; or
(D) Hepatitis A virus associated with foodborne or waterborne transmission that are reportable according to 410 IAC 1-2.3.
(Indiana State Department of Health; 410 IAC 7-21-26)

410 IAC 7-21-27 "Quality control operation" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-2-2; IC 16-42-5

Sec. 27. "Quality control operation" means a planned and systematic procedure for taking all actions necessary to prevent food from being adulterated as defined under IC 16-42-2-2. *(Indiana State Department of Health; 410 IAC 7-21-27)*

410 IAC 7-21-28 "Reduced oxygen packaging" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 28. (a) "Reduced oxygen packaging" means the following:
(1) The reduction of the amount of oxygen in a package by:
(A) removing oxygen;
(B) displacing oxygen and replacing it with another gas or combination of gases; or
(C) otherwise controlling the oxygen content to a level below that normally found in the surrounding twenty-one percent (21%) oxygen atmosphere.
(2) A process as specified in subdivision one (1) that involves a food for which Clostridium botulinum is identified as a microbiological hazard in the final packaged form.

(b) The term includes the following:
(1) Vacuum packaging in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package, such as sous vide.
(2) Modified atmosphere packaging in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes any of the following:
(A) Reduction in the proportion of oxygen.
(B) Total replacement of oxygen.
(C) An increase in the proportion of other gases, such as carbon dioxide or nitrogen.
(3) Controlled atmosphere packaging in which the atmosphere of a package of food is modified so that, until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained as such by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material.
(Indiana State Department of Health; 410 IAC 7-21-28)

410 IAC 7-21-29 "Restricted use pesticide" defined
Authority: IC 16-42-5-5
Affected: IC 15-3-3.5-2; IC 16-42-5

Sec. 29. "Restricted use pesticide" has the same meaning as defined in IC 15-3-3.5-2(27). *(Indiana State Department of Health; 410 IAC 7-21-29)*

410 IAC 7-21-30 "Rework" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 30. "Rework" means clean, unadulterated food that has been removed from processing for reasons other than insanitary conditions or that has been successfully reconditioned by reprocessing and that is suitable for use as food. *(Indiana State Department of Health; 410 IAC 7-21-30)*

410 IAC 7-21-31 "Sanitization" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 31. "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five (5) logs, which is equal to a ninety-nine and nine hundred ninety-nine thousandths percent (99.999%) reduction of representative disease-causing microorganisms of public health significance. *(Indiana State Department of Health; 410 IAC 7-21-31)*

410 IAC 7-21-32 "Scheduled process" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 32. "Scheduled process" means the process selected by a processor as adequate for use under food manufacturing conditions to achieve and maintain a food that will not permit the growth of microorganisms having a public health significance. The term includes control of pH and other critical factors equivalent to the process established by a competent processing authority. *(Indiana State Department of Health; 410 IAC 7-21-32)*

410 IAC 7-21-33 "Water activity" defined
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 33. "Water activity" indicated by the symbol a_w means water activity that is a measure of the free moisture in a food and the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature. *(Indiana State Department of Health; 410 IAC 7-21-33)*

410 IAC 7-21-34 "Wholesale food establishment" defined
Authority: IC 16-42-5-5
Affected: IC 15-2.1; IC 16-42

Sec. 34. (a) "Wholesale food establishment" means any establishment within Indiana that manufactures, packages, stores, repackages, or transports human food products for distribution to another entity for resale or redistribution.

(b) The term does not include the following:
(1) A residential kitchen in a private home.
(2) Bed and breakfast establishments subject to 410 IAC 7-15.5.
(3) An establishment engaged solely in the harvesting, storage, or distribution of one (1) or more raw agricultural commodities, that is not ordinarily cleaned, prepared, treated, or otherwise processed before being marketed to the consuming public.
(4) Meat and poultry processing plants subject to IC 15-2.1-24; dairy processing plants subject to IC 15-2.1-22, IC 15-2.1-23 and 345 IAC 8; or shell egg plants subject to 370 IAC 1-10-1 and IC 16-42-11.
(5) Any establishments as defined in 410 IAC 7-20-70, except when engaged in activities under subsection (a) or when producing acidified foods in hermetically sealed containers.
(Indiana State Department of Health; 410 IAC 7-21-34)

410 IAC 7-21-35 Personnel health
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 35. (a) The plant management shall take all reasonable measures and precautions to ensure compliance with the following:
(1) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have:
(A) an illness;
(B) an open lesion, including:
(i) boils;
(ii) sores; or
(iii) infected wounds; or
(C) any other abnormal source of microbial contamination;
by which there is a reasonable possibility of food, food-contact surfaces, or food-packaging materials becoming contaminated shall be excluded or restricted from any operations, which may result in contamination until the condition is corrected. Personnel shall be instructed to report such health conditions to supervisory personnel.
(2) An exclusion shall be applied if a food employee is diagnosed with an illness due to Salmonella spp., Shigella spp., Escherichia coli 0157:H7, or Hepatitis A virus. A food employee shall be restricted from working with exposed food, food-contact surfaces, clean equipment, and utensils or food-packaging materials if the food employee:
(A) has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness, such as, diarrhea, fever, vomiting, jaundice, or sore throat with fever;
(B) has a lesion containing pus, such as a boil or infected wound that is open or draining and is:
(i) on the hands or wrists unless an impermeable cover, such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;

(ii) on exposed portions of the arms unless the lesion is protected by an impermeable cover; or

(iii) on the other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; or

(C) is not experiencing a symptom of acute gastroenteritis as specified in this subdivision, but has a stool that yields a specimen culture that is positive for Salmonella spp., Shigella spp., or Escherichia coli O157:H7.

(3) An exclusion may be removed when supervisory personnel obtains from the excluded person written medical documentation from a physician, a nurse practitioner, or a physician assistant that the excluded person may work in an unrestricted capacity.

(4) A restriction may be removed by supervisory personnel when the restricted person:

(A) is free of the symptoms of illness specified in subdivision (2) and no foodborne illness occurs that may have been caused by the restricted person;

(B) is suspected of causing foodborne illness but:

(i) is free of the symptoms specified under subdivision (2)(A); and

(ii) provides written medical documentation from a physician, a nurse practitioner, or a physician assistant stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness; or

(C) provides written medical documentation from a physician, a nurse practitioner, or a physician assistant stating that the symptoms experienced result from a chronic noninfectious condition, such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.

(b) The department may issue an order of restriction or exclusion to a wholesale food establishment without prior warning, notice of a hearing, or a hearing if the order states the following:

(1) The reasons for the restriction or exclusion that is ordered.

(2) The evidence that the wholesale food establishment shall provide in order to demonstrate that the reasons for the restriction or exclusion has been eliminated.

(3) That a suspected food employee or the wholesale food establishment may request an appeal hearing by submitting a timely request as provided in law.

(4) The name and address of the department's representative to whom a request for an appeal hearing may be made.

(Indiana State Department of Health; 410 IAC 7-21-35)

410 IAC 7-21-36 Personnel hygienic practices

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 36. All persons working in direct contact with food, food-contact surfaces, and food-packaging materials shall conform to good hygienic practices while on duty. The methods for maintaining good hygiene include, but are not limited to, the following:

(1) Wearing clean outer garments suitable to the operation in a manner that protects against the contamination of food, food-contact surfaces, or food-packaging materials.

(2) Maintaining adequate personal cleanliness, including:

(A) keeping fingernails clean and neatly trimmed; and

(B) not wearing fingernail polish or artificial fingernails;

while working with exposed food.

(3) Washing hands thoroughly in an adequate hand washing facility as follows:

(A) Before starting work.

(B) After each absence from the work station.

(C) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(D) After using the toilet room.

(E) After caring for or handling service animals or aquatic animals.

(F) After coughing, sneezing, or using a handkerchief or disposable tissue.

(G) After drinking, unless the handling of the container allows for no direct contamination, and after eating or using tobacco.

(H) After handling soiled surfaces, equipment, or utensils.

(I) During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks.

(J) When switching between working with raw food and working with ready-to-eat food.

(K) Directly before touching ready-to-eat food or food-contact surfaces.

(L) At any other time when the hands may have become soiled or contaminated.

(4) Wearing no jewelry while preparing food. If hand jewelry cannot be removed or if approval is given by supervisory personnel for the wearing of a wedding band, it may be covered by an impermeable cover, such as a glove, that can be maintained in an intact, clean, and sanitary condition and that protects against contamination.

(5) Maintaining gloves in an intact, clean, and sanitary condition if they are used in direct contact with food. The gloves shall be made of an impermeable material.

(6) Wearing hair restraints, such as nets, hats, beard restraints, and clothing that covers body hair, which are designed and worn effectively to keep hair from contacting exposed food, clean food-contact equipment and utensils.

(7) Storing employees' food and personal belongings in a designated location separate from food processing, storage, and packaging areas.

(8) Confining the following to areas other than where food and food processing equipment may be exposed or where equipment or utensils are washed and stored:

(A) eating food;
(B) chewing gum;
(C) drinking beverages; or
(D) using tobacco.

(9) Taking any other necessary precautions to protect against contamination of food, food-contact surfaces, or food-packaging materials with microorganisms or foreign substances, including, but not limited to, the following:
(A) Perspiration.
(B) Hair.
(C) Cosmetics.
(D) Tobacco.
(E) Chemicals.
(F) Medicines applied to the skin.

(Indiana State Department of Health; 410 IAC 7-21-36)

410 IAC 7-21-37 Personnel training

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 37. (a) Personnel responsible for identifying sanitation failures or food contamination shall have an educational background or experience, or a combination thereof, to provide a level of competency necessary for production of unadulterated, honestly presented, safe food. Food employees and supervisory personnel involved in food processing shall receive appropriate training in proper food-handling techniques, foodborne illness prevention, and food protection principles and be informed of the danger of poor personal hygiene and insanitary practices.

(b) Competent supervisory personnel shall be clearly assigned responsibility for assuring compliance by all food employees engaged in food processing with all requirements. Supervisory personnel shall hold a certification or be trained at a minimum on the following areas of knowledge as are applicable to the operations conducted at the wholesale food establishment:

(1) The relationship between the prevention of foodborne disease and the personal hygiene of a food employee.
(2) Responsibility of supervisory personnel for preventing the transmission of foodborne disease by a food employee who has an illness or medical condition that may cause foodborne disease.
(3) Symptoms associated with the diseases that are transmissible through food.
(4) Required food temperatures and times for safe cooking, cooling and reheating of potentially hazardous foods and refrigerated storage temperatures include those for meat, poultry, eggs, and fish.
(5) The relationship between the prevention of foodborne illness and the management and control of the following:
(A) Cross-contamination.
(B) Hand contact with ready-to-eat foods.
(C) Hand washing.
(D) Maintaining the wholesale food establishment in a clean condition and in good repair.

(6) The correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment.
(7) Poisonous or toxic materials identification and the procedures necessary to ensure that they are safely stored, dispensed, used and disposed of according to law.
(8) Knowledge of important processing points in the operation from purchasing through sale or service.
(9) The principles and details of a HACCP plan, if used, or if required by federal or state law, or if an agreement between the department and the firm exists.
(10) Water sources identification and measures taken to ensure that it remains protected from contamination, such as providing protection from backflow and precluding the creation of cross-connections.

(Indiana State Department of Health; 410 IAC 7-21-37)

410 IAC 7-21-38 Physical facilities and grounds

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 38. (a) The grounds surrounding a food plant under the control of the operator shall be kept in a condition that will protect against the contamination of food. The methods for adequate maintenance of grounds include, but are not limited to, the following:

(1) Properly storing or removing unnecessary equipment, removing litter and waste, and cutting weeds or grass within the immediate vicinity of the physical facility that may constitute an attractant, breeding place, or harborage for pests.
(2) Maintaining roads and parking lots so that they do not constitute a source of contamination in areas where food is exposed.
(3) Adequately draining areas that may contribute contamination to food by seepage, foot-borne filth, or providing a breeding place for pests.
(4) Operating systems for waste treatment and removal of liquid and solid waste at such a frequency that the waste does not constitute a source of contamination in areas where food is exposed.
(5) Constructing, if needed, an outdoor storage surface of nonabsorbent material, such as concrete or asphalt that shall be smooth, durable, and sloped to drain for refuse, recyclables, and returnables. Refuse, recyclables, and returnables shall be handled by:
(A) storing them in receptacles or waste handling units so that they are inaccessible to insects and rodents.
(B) keeping receptacles and waste handling units for refuse, recyclables, and returnables covered with tight-fitting lids or doors; and
(C) locating receptacles and waste handling equipment at a distance from the building that minimizes the entrance of pests and other vermin.

(b) If the wholesale food establishment grounds are bordered by grounds not under the operator's control and not maintained in the manner described in subsection (a)(1) through (a)(3), care shall be exercised in the plant by inspection, extermination, or other means to exclude pests, dirt, and filth that may be a source of food contamination.

(c) Physical facilities shall be adequate in size, construction, and design to facilitate maintenance and sanitary operations for food manufacturing purposes. Methods for maintaining a sanitary operation include, but are not limited to, the following:

(1) Providing sufficient space for placement of equipment and storage of materials.

(2) Taking precautions to reduce the potential for contamination of food, food-contact surfaces, or food-packaging materials with microorganisms, chemicals, filth, or other extraneous material. The potential for contamination shall be reduced by adequate food safety controls and operating practices or effective design, including the separation of operations in which contamination is likely to occur, by one (1) or more of the following means:

(A) Location.

(B) Time.

(C) Partition.

(D) Air flow.

(E) Enclosed systems.

(F) Other effective means.

(3) Locating areas designated for employees to eat, drink, and use tobacco so that food and equipment are protected from contamination.

(4) Prohibiting a person from living or sleeping in a room used for food-handling or in a room opening directly into a wholesale food establishment. If living or sleeping quarters are located on the premises, such as those provided for security personnel, it shall be separated from rooms and areas used for wholesale food establishment operations by complete partitioning and solid self-closing doors.

(5) Protecting food in outdoors bulk fermentation vessels by any effective means, including, but not limited to, the following:

(A) Using protective coverings.

(B) Controlling areas over and around the vessels to eliminate harborages for pests.

(C) Checking on a regular basis for pests and pest infestation.

(D) Skimming the fermentation vessels, when necessary.

(6) Constructing facility in such a manner that:

(A) floors, walls, and ceilings may be adequately cleaned and maintained in good repair;

(B) drip or condensate from fixtures, ducts, and pipes does not contaminate food, food-contact surfaces, or food-packaging materials; and

(C) aisles or working spaces are provided between equipment and walls and food products and walls and are adequately unobstructed and have adequate width to permit employees to perform their duties and to protect against contaminating food or food-contact surfaces with clothing or personal contact.

(7) Providing sufficient lighting in hand washing areas, dressing and locker rooms, toilet rooms, and all areas where food is examined, processed, or stored and where equipment or utensils, are cleaned. Light bulbs shall be protected in the following manner:

(A) Shielded, coated, or otherwise shatter-resistant in areas suspended over exposed food in any step of preparation and over clean equipment, utensils, and linens.

(B) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if:

(i) the integrity of the packages cannot be affected by broken glass falling onto them; and

(ii) the packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(8) Providing adequate ventilation or control equipment to minimize odors and vapors, including steam and noxious fumes, in areas where they may contaminate food, and locate and operate fans and other air blowing equipment in a manner that minimizes the potential for contaminating food, food-packaging materials, and food-contact surfaces. To comply:

(A) intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials; and

(B) ventilation systems may not create a public health hazard or nuisance or unlawful discharge, if vented to the outside.

(9) Protecting outer openings against the entry of insects, rodents, or other vermin by:

(A) filling or closing holes and other gaps along floor, walls, and ceilings;

(B) closed, tight-fitting windows;

(C) solid, self-closing, and tight-fitting doors, except emergency exit and dock doors do not need to be self-closing; and

(D) using screening, air curtains, or other effective means, when appropriate.

(Indiana State Department of Health; 410 IAC 7-21-38)

410 IAC 7-21-39 Sanitary operations; general maintenance

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 39. (a) The plant shall be:

(1) maintained in a sanitary condition; and

(2) kept in repair sufficient to prevent food from becoming adulterated.

Cleaning and sanitizing of utensils and equipment shall be conducted in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials.

(b) Food-contact surfaces, utensils, and equipment shall be cleaned as frequently as necessary to protect against contamination of food by performing the following:

(1) Food-contact surfaces of equipment and utensils used for manufacturing or holding low moisture food shall be in a dry, clean, and sanitary condition at the time of use. When the food-contact surfaces are wet cleaned, they shall be sanitized and thoroughly dried before subsequent use.

(2) In wet processing, when cleaning is performed to protect against the introduction of microorganisms into food, food-contact surfaces shall be cleaned and sanitized before use and after any interruption during which the food-contact surfaces may have become contaminated.

(3) Where equipment and utensils are used in a continuous production operation, food-contact surfaces of the equipment shall be cleaned and sanitized as necessary to prevent contamination.

(4) Nonfood-contact surfaces of equipment used in the operation of food plants should be cleaned as frequently as necessary to protect against contamination of food.

(5) Single-service articles, such as utensils intended for one-time use, paper cups, and paper towels, should be stored in appropriate containers and shall be handled, dispensed, used, and disposed of in a manner that protects against contamination of food or food-contact surfaces.

(6) Cleaned and sanitized portable equipment with food-contact surfaces and utensils shall be stored in a location and manner that protects food-contact surfaces from contamination.

(7) Sanitizing agents shall be effective and safe under conditions of use. Any facility, procedure, or machine is acceptable for cleaning and sanitizing equipment and utensils if it is established that the facility, procedure, or machine will routinely render equipment and utensils clean and sanitized.

(8) Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 21 CFR 178.1010.

(Indiana State Department of Health; 410 IAC 7-21-39)

410 IAC 7-21-40 Toxic and poisonous substances; pest control

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 40. (a) Cleaning compounds and sanitizing agents used in cleaning and sanitizing procedures shall be free from undesirable microorganisms and shall be safe and adequate under the conditions of use. Compliance with this requirement may be verified by an effective means, including, but not limited to, purchase of substances under a supplier's guarantee or certification, or examination of the substances for contamination.

(b) Only the following toxic materials may be used or stored in a plant where food is processed or exposed:

(1) Chemicals required for maintaining clean and sanitary conditions.

(2) Chemicals necessary for use in laboratory testing procedures.

(3) Chemicals necessary for plant and equipment maintenance and operation.

(4) Chemicals necessary for use in the plant's operations.

(c) Toxic cleaning compounds, sanitizing agents, and pesticide chemicals shall be identified, held, and stored in a manner that protects against contamination of food, food-contact surfaces, or food-packaging materials. Poisonous or toxic materials shall be stored and transported according to the following:

(1) Separating the poisonous or toxic materials by spacing or partitioning.

(2) Locating the poisonous or toxic materials in an area that is not above food, equipment, linens, or food-contact surfaces.

(d) Poisonous or toxic materials shall be applied and used according to all relevant regulations promulgated by other federal, state, and local government agencies and according to the following:

(1) Manufacturers' use directions on the label.

(2) The conditions of certification for use of the pest control materials.

(3) Applied in a manner that does not constitute a hazard to personnel or does not contaminate by drip, drain, fog, splash, or spray any food, equipment, utensils, linens, or other food-contact surface. For pesticide use, this is achieved by:

(A) removing the items;

(B) covering the items with impermeable covers; or

(C) taking other appropriate preventive action and cleaning and sanitizing equipment, utensils, and food-contact surfaces after application.

(4) Chemicals used to wash or peel whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315.

(5) Chemicals used as boiler water additives shall meet the requirements as specified in 21 CFR 173.310.

(6) A restricted use pesticide shall be applied only by an applicator certified according to 312 IAC 18-3-14 or a person under the direct supervision of a certified applicator.

(e) Pests shall not be allowed in any area of a wholesale food establishment. Effective measures shall be taken to exclude pests from the processing areas and to protect against the contamination of food on the premises by pests. The use of insecticides or rodenticides is permitted only

under precautions and restrictions that protect against the contamination of food, food-contact surfaces, and food-packaging materials, such as the following:

(1) Rodent bait shall be contained in a covered, tamper-resistant bait station.

(2) Toxic tracking powder pesticide may not be used in wholesale food establishments.

(f) Guard dogs and service animals may be allowed in some areas of a plant if the presence of the animals cannot result in contamination of food, food-contact surfaces, or food-packaging materials. *(Indiana State Department of Health; 410 IAC 7-21-40)*

410 IAC 7-21-41 Plumbing and sewage systems

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 41. Each facility shall be equipped with effective plumbing and sewage facilities and adequate accommodations, including, but not limited to, the following:

(1) The water supply shall be sufficient for the operations intended and shall be derived from an approved source. Drinking water and water used for food processing operations shall meet bacteriological and chemical quality standards specified in 327 IAC 8-2. Running water at a suitable temperature and under pressure as needed shall be provided in all areas where required for the processing of food, for the cleaning of equipment, utensils, and food-packaging materials, or for employee sanitary facilities.

(2) If a food processing plant obtains water from a water system not subject to 327 IAC 8-2 for its operations the operator shall sample the water at least annually for bacterial analysis by a certified laboratory, maintain records of analyses of sample results for three (3) years, and provide such records to the department upon request.

(3) A plumbing system shall be of sufficient size and shall be designed, constructed, installed, and maintained according to the applicable Indiana plumbing code, 675 IAC 16-1.3, to do the following:

(A) Carry sufficient quantities of water to required locations throughout the facility.

(B) Properly convey sewage and liquid disposable waste from the facility.

(C) Avoid constituting a source of contamination to food, water supplies, equipment, and utensils or creating an unsanitary condition.

(D) Provide sufficient floor drainage in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(E) Prevent backflow or backsiphonage from, or cross-connection between, piping systems that discharge wastewater or sewage and piping systems that carry water for food or food manufacturing. This shall be accomplished by the following:

(i) Installing a backflow or backsiphonage prevention device on a water supply system which meets the standards in 675 IAC 16-1.3 for construction, installation, maintenance, inspection and testing for that specific application and type of approved device.

(ii) Using an air gap, if necessary, between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment. It shall be at least twice the diameter of the water supply inlet and may not be less than one (1) inch.

It shall be a minimum of two (2) pipe diameters of the pipe or six (6) inches, whichever is the lesser.

(4) Sewage disposal shall be conveyed into an approved sanitary sewerage system or other system, including the use of sewage transport vehicles, pumps, hoses, and connections that are constructed, maintained, and operated according to law.

(Indiana State Department of Health; 410 IAC 7-21-41)

410 IAC 7-21-42 Sanitary facilities and controls

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 42. (a) Each facility shall provide its employees with adequate, readily accessible toilet facilities. Compliance with this requirement shall be accomplished by, but not limited to, the following:

(1) Maintaining the facilities in a sanitary condition.

(2) Keeping the facilities in good repair at all times.

(3) Providing self-closing doors.

(4) Providing doors that do not open into areas where food is exposed to airborne contamination, except where alternate means have been taken to protect against contamination such as double doors or positive airflow systems.

(b) Each facility shall provide its employees with hand washing facilities that are adequate, readily accessible, and convenient. Compliance with this requirement shall be accomplished by providing the following:

(1) Hand washing facilities at each location in the plant where good sanitary practices require employees to wash their hands. Each hand washing facility shall be:

(A) furnished with hot and cold running water tempered by means of a mixing valve or combination faucet; and

(B) capable of reaching a minimum water temperature of eighty-five (85) degrees Fahrenheit within sixty (60) seconds.

(2) Effective hand-cleaning preparations.

(3) Sanitary towel service, paper towels, or suitable drying devices.

(4) Devices or fixtures, such as water control valves, designed and constructed to protect against recontamination of clean hands.

(5) Signs directing food employees handling unprotected

food, unprotected food-packaging materials, and food-contact surfaces to wash and, where appropriate, sanitize their hands. These signs should be posted in the processing room and in all other areas where employees handle food, food-packaging materials, or food-contact surfaces. If necessary, the signs should be multilingual.

(c) Receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect-resistant, rodent-resistant, leakproof, nonabsorbent, and maintained in good repair.

(d) Rubbish and any offal shall be so conveyed, stored, and disposed of as to minimize the development of odor, minimize the potential for the waste becoming an attractant and harborage or breeding place for pests, and protect against contamination of food, food-contact surfaces, water supplies, and ground surfaces. *(Indiana State Department of Health; 410 IAC 7-21-42)*

410 IAC 7-21-43 Equipment and utensils

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 43. (a) All processing equipment and utensils shall be so designed and of such material and workmanship as to be effectively cleanable, and shall be properly maintained. The design, construction, and use of equipment and utensils shall preclude the adulteration of food with lubricants, fuel, metal fragments, contaminated water, or any other contaminants. All equipment shall be so installed and maintained as to facilitate the cleaning of the equipment and of all adjacent spaces. Food-contact surfaces shall be corrosion-resistant when in contact with food. They shall be made of nontoxic materials and designed to withstand the environment of their intended use and the action of food, and, if applicable, cleaning compounds and sanitizing agents. Food-contact surfaces shall be maintained to protect food from being contaminated by any source, including unlawful indirect food additives by the following means:

(1) Seams on food-contact surfaces shall be smoothly bonded or maintained so as to minimize accumulation of food particles, dirt, and organic matter and thus minimize the opportunity for growth of microorganisms.

(2) Equipment that is in the manufacturing or food-handling area and that does not come into contact with food shall be so constructed that it can be maintained in a clean condition.

(3) Holding, conveying, and manufacturing systems, including gravimetric, pneumatic, closed, and automated systems, shall be of a design and construction that enables them to be maintained in an appropriate sanitary condition.

(b) Each freezer and refrigeration unit, including transportation vehicles, used to store, hold, or transport food capable of supporting growth of microorganisms shall be fitted with an indicating thermometer, temperature measuring device, or temperature recording device so installed as to show the temperature accurately within the compartment and should be fitted with an automatic control for regulating temperature or with an automatic alarm system to indicate a significant temperature change in a manual operation. The operator shall do the following:

(1) Record the temperature shown by each measuring device installed in the unit, with the date on which the temperature reading was taken. Temperature shall be monitored and recorded at least weekly.

(2) Retain and have available for inspection the temperature records for the last six (6) months.

(c) Instruments and controls used for measuring, regulating, or recording temperatures, pH, acidity, water activity, or other conditions that control or prevent the growth of undesirable microorganisms in food shall be accurate and adequately maintained, sufficient in number for their designated uses, and calibrated at the frequency recommended by the manufacturer of the device. The ambient air temperature measuring devices that are scaled in Fahrenheit shall be accurate to plus or minus three (3) degrees Fahrenheit in the intended range of use.

(d) The amount of food stored in a refrigerator or frozen food storage unit shall not exceed the designed capacity of that unit.

(e) Compressed air or other gases mechanically introduced into food or used to clean food-contact surfaces or equipment shall be treated in such a way that food is not contaminated with unlawful indirect food additives. *(Indiana State Department of Health; 410 IAC 7-21-43)*

410 IAC 7-21-44 Raw materials; production and process controls

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 44. (a) All operations in the receiving, inspecting, transporting, segregating, preparing, manufacturing, packaging, and storing of food shall be conducted in accordance with current sanitation principles as follows:

(1) Appropriate quality control operations shall be employed to ensure that food is suitable for human consumption and that food-packaging materials are safe and suitable.

(2) Overall sanitation of the plant shall be under the supervision of one (1) or more competent individuals assigned responsibility for this function.

(3) All reasonable precautions shall be taken to ensure that production procedures do not contribute contamination from any source by adhering to the following:

(A) Chemical, microbial, or extraneous material testing

procedures shall be used where necessary to identify sanitation failures or possible food contamination.
(B) All food that has become contaminated to the extent that it is adulterated shall be rejected or, if permissible, treated or processed to eliminate the contamination.

(b) Raw materials and other ingredients shall be inspected and segregated or otherwise handled as necessary to ensure that they are clean and suitable for processing into food and shall be stored under conditions that will protect against contamination and minimize deterioration by the following:
(1) Washing or cleaning raw materials as necessary to remove soil or other contamination.
(2) Using water for washing, rinsing, or conveying food that is safe and meets the quality standards specified in 327 IAC 8-2.
(3) Reusing water for washing, rinsing, or conveying food if it does not increase the level of contamination of the food.
(4) Inspecting on receipt containers and carriers of raw materials to ensure that their condition has not contributed to the contamination or deterioration of food.

(c) Raw materials and other ingredients shall not contain levels of microorganisms that may produce foodborne illness or other disease in humans. If the potential for high levels of disease-causing microorganisms is present, food shall be pasteurized or otherwise treated during manufacturing operations so that the food no longer contains levels that would cause the product to be adulterated. Compliance with this requirement may be verified by any effective means, such as with a HACCP plan or purchasing raw materials and other ingredients under a supplier's guarantee or certification.

(d) Raw materials and other ingredients susceptible to contamination with aflatoxin or other natural toxins shall comply with current state and federal regulations, guidelines, and action levels for poisonous or deleterious substances before these materials or ingredients are incorporated into finished food. Compliance with this requirement may be accomplished by:
(1) purchasing raw materials and other ingredients under a supplier's guarantee or certification; or
(2) verifying by analyzing these materials and ingredients for aflatoxins and other natural toxins.

(e) Raw materials, other ingredients, and rework susceptible to contamination with pests, undesirable microorganisms, or extraneous material shall comply with applicable state and federal regulations, guidelines, and defect action levels for natural or unavoidable defects, as specified in 21 CFR 110.110, if a manufacturer wishes to use the materials in manufacturing food. Compliance with this requirement may be verified by any effective means, such as:
(1) purchasing the materials under a supplier's guarantee or certification; or
(2) examination of these materials for contamination.

(f) Raw materials, other ingredients, and rework shall be held in bulk, or in containers designed and constructed to protect against contamination and shall be held at proper temperature and relative humidity and in such a manner as to prevent the food from becoming adulterated. Material scheduled for rework shall be identified as such.

(g) Liquid or dry raw materials and other ingredients received and stored in bulk form shall be stored in a manner that protects against contamination.

(h) Frozen raw materials and other ingredients shall be kept frozen. If thawing is required prior to use, it shall be done in a manner that prevents the raw materials and other ingredients from becoming adulterated.

(i) Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170 through 21 CFR 180 relating to food additives generally recognized as safe, or prior sanctioned substances that exceed amounts specified in 21 CFR 181, 21 CFR 182, 21 CFR 184, and 21 CFR 186. *(Indiana State Department of Health; 410 IAC 7-21-44)*

410 IAC 7-21-45 Manufacturing operations
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 45. (a) Equipment and utensils and finished food containers shall be maintained in an acceptable condition through appropriate cleaning and sanitizing and when necessary the following:
(1) Equipment shall be taken apart for thorough cleaning and sanitizing.
(2) A CIP system may be used when the design of the equipment requires the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution.

(b) All food manufacturing, including packaging and storage, shall be conducted under conditions and controls as necessary to minimize the potential for the growth of microorganisms or the contamination of food. Compliance with this subsection may require careful monitoring of physical factors, such as time, temperature, humidity, water activity (a_w), pH, pressure, flow rate, and manufacturing operations, such as freezing, dehydration, heat processing, acidification, and refrigeration to ensure that mechanical breakdowns, time delays, temperature fluctuations, and other factors do not contribute to the decomposition or contamination of food.

(c) Food that can support the rapid growth of undesirable

microorganisms, particularly those of public health significance, shall be held in a manner that prevents the food from becoming adulterated. Compliance with this subsection shall be accomplished by an effective means, including, but not limited to, the following:

(1) Maintaining cold, potentially hazardous foods at forty-one (41) degrees Fahrenheit or below. Exceptions to this requirement are when the receiving and storage temperatures are specified in another law, such as laws governing milk, molluscan shellfish, and shell eggs. These foods may be received and stored at the temperature specified in law.

(2) Maintaining hot, potentially hazardous foods at one hundred forty (140) degrees Fahrenheit or above.

(3) Heat treating acid or acidified foods to destroy mesophilic micro-organisms when those foods are to be held in hermetically sealed containers at ambient temperatures.

(d) Frozen foods shall be maintained in a frozen state and should be stored at zero (0) degrees Fahrenheit or below. Frozen foods shall not be refrozen after having been thawed unless the products are to be further processed by the processor, as necessary to control microbial growth.

(e) Frozen foods during transportation shall remain frozen and should be at zero (0) degrees Fahrenheit or below. Refrigerated foods during transportation shall be at forty-one (41) degrees Fahrenheit or below unless law governing their distribution applies, such as temperature requirements for shell eggs.

(f) Measures such as sterilizing, irradiating, pasteurizing, freezing, refrigerating, controlling pH, or controlling a_w that is taken to destroy or prevent the growth of undesirable microorganisms, particularly those of public health significance, shall be effective under the conditions of manufacturing, handling, and distribution to prevent food from being adulterated.

(g) Work-in-process shall be handled in a manner that protects against contamination.

(h) Effective measures shall be taken to protect finished food from contamination by raw materials, other ingredients, including potential food allergens, or refuse in the following manner:

(1) When raw materials, other ingredients, or refuse are unprotected, they shall not be handled simultaneously in receiving, loading, or shipping areas if that handling could result in contaminated food.

(2) Food transported by conveyor shall be protected against contamination as necessary.

(i) Equipment, containers and utensils used to convey, hold, or store raw materials, work-in-process, rework, or food shall be of a food grade quality and constructed, handled, and maintained during manufacturing or storage in a manner that protects against contamination.

(j) Effective measures shall be taken to protect against the inclusion of metal or other extraneous material in food. Compliance with this subsection shall be accomplished by using sieves, traps, magnets, and electronic metal detectors, or other effective means. If lubricants are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food-contact surfaces, they shall meet the requirements specified in 21 CFR 178.3570.

(k) Food, raw materials, and other ingredients that are adulterated shall be disposed of in a manner that protects against the contamination of other food. If the adulterated food is capable of being reconditioned, it shall be reconditioned using a method that has been proven to be effective or it shall be reexamined and found not to be adulterated before being incorporated into other food.

(l) Mechanical manufacturing steps,, such as washing, peeling, trimming, cutting, sorting, and inspecting, mashing, dewatering, cooling, shredding, extruding, drying, whipping, defatting, and forming shall be performed so as to protect food against contamination. Compliance with this subsection shall be accomplished by providing adequate physical protection of food from contaminants that may drip, drain, or be drawn into the food. Protection shall be provided by adequate cleaning and sanitizing of all food-contact surfaces and by using time and temperature controls at and between each manufacturing step.

(m) Heat blanching, when required in the preparation of food, should be effected by heating the food to the required temperature, holding it at this temperature for the required time, and then either rapidly cooling the food or passing it to subsequent manufacturing without delays. Thermophilic growth and contamination in blanchers should be minimized by the use of effective operating temperatures and by periodic cleaning. Where the blanched food is washed prior to filling, water used shall be safe and meet the quality standards specified in 327 IAC 8-2.

(n) Batters, breading, sauces, gravies, dressings, and other similar preparations shall be treated or maintained in such a manner that they are protected against contamination. If the products are potentially hazardous they shall be held at forty-one (41) degrees Fahrenheit or below or at one hundred forty (140) degrees Fahrenheit or above. Compliance with this subsection shall be accomplished by an effective means, including one (1) or more of the following:

(1) Using ingredients free of contamination.

(2) Employing adequate heat processes where applicable.

(3) Using adequate time and temperature controls.
(4) Providing effective physical protection of food or equipment from contaminants that may drip, drain, or be drawn into them.
(5) Rapid cooling to a storage temperature of forty-one (41) degrees Fahrenheit or below.
(6) Disposing of batters at appropriate intervals to protect against the growth of microorganisms.

(o) Filling, assembling, packaging, and other operations shall be performed in a way that the food is protected against contamination. Compliance with this subsection shall be accomplished by the following:
(1) Using a quality control operation in which the critical control points are identified and controlled during manufacturing, if applicable.
(2) Adequate cleaning and sanitizing of all food-contact surfaces and food containers.
(3) Using materials for food containers and food-packaging materials that are safe and intended for food use.
(4) Providing effective physical protection from contamination, particularly airborne contamination.
(5) Using sanitary handling procedures.

(p) Food, such as, but not limited to, dry mixes, nuts, intermediate moisture food, and dehydrated food, that relies on the control of a_w for preventing the growth of undesirable microorganisms shall be processed to and maintained at a safe moisture level of eighty-five hundredths (0.85) or less. Compliance with this subsection shall be accomplished by any effective means, including the employment of one (1) or more of the following practices:
(1) Monitoring the a_w of food.
(2) Controlling the soluble solids/water ratio in finished food.
(3) Protecting finished food from moisture pick-up by use of a moisture barrier or by other means so that the a_w of the food does not increase to an unsafe level.

(q) When ice is used as an ingredient or in contact with food, it shall be made from water that is safe and meets the quality standards specified in 327 IAC 8-2. It shall be used only if it has been manufactured in accordance with this rule.

(r) Bottled drinking water, manufactured, used, or sold, shall meet the requirements of 21 CFR 129 and 21 CFR 165.

(s) Food-manufacturing areas and equipment used for manufacturing human food should not be used to manufacture nonhuman food-grade animal feed or inedible products unless there is no reasonable possibility for the contamination of the human food.

(t) The operator of a wholesale food establishment that manufactures ready-to-eat, potentially hazardous foods shall report to the department the results of any microbiological test or other laboratory analysis, which shows a likelihood that any ready-to-eat food produced by that operator contains pathogenic organisms, undeclared allergens, or other health hazards. The operator shall report to the department within twenty-four (24) hours after receiving positive test results. The operator may report orally, electronically, or in writing, except as specified in the following:
(1) A wholesale food establishment operator is not required to report test results if the following conditions apply:
(A) A product code or production date identifies the ready-to-eat food lot number.
(B) The wholesale food establishment operator has not sold or distributed any of the food represented by the product code or production lot number as specified under clause (A).
(2) The department shall be notified in a timely manner if the wholesale food establishment initiates a recall and if positive testing results in the disposition of products.

(Indiana State Department of Health; 410 IAC 7-21-45)

410 IAC 7-21-46 Reduced oxygen packaging

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 46. (a) A wholesale food establishment that packages food using a reduced oxygen packaging method, with Clostridium botulinum identified as a microbiological hazard in the final packaged form, shall ensure that there are at least two (2) barriers in place to control the growth and toxin formation of Clostridium botulinum. These controls may include refrigeration, pH, and water activity.

(b) An establishment that packages food using a reduced oxygen packaging method, with Clostridium botulinum identified as a microbiological hazard in the final packaged form, shall have a HACCP plan that does the following:
(1) Contains a flow diagram by specific food or category type identifying critical control points and providing information on the following:
(A) Ingredients, materials, and equipment used in the preparation of that food.
(B) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved.
(2) Contains a statement of standard operating procedures for the plan that clearly identifies the following:
(A) Each critical control point.
(B) The critical limits for each critical control point.
(C) The method and frequency for monitoring and controlling each critical control point by the food employee designated by supervisory personnel.
(D) The method and frequency for supervision to routinely verify that the food employee is following

standard operating procedures and monitoring critical control points.

(E) Action to be taken by supervision if the critical limits for each critical control point is not met.

(F) Records to be maintained by supervision to demonstrate that the HACCP plan is properly operated and managed.

(3) Identifies the food to be packaged.

(4) Limits the food packaged to a food that does not support the growth of Clostridium botulinum because it meets with one (1) of the following criteria:

(A) Has an a_w of ninety-one hundredths (0.91) or less.

(B) Has a pH of four and six-tenths (4.6) or less.

(C) Is a meat or poultry product cured at a food processing plant regulated by the United States Department of Agriculture and is received in an intact package.

(D) Is a food with a high level of competing organisms, such as raw meat or raw poultry.

(5) Specifies methods for maintaining food at forty-one (41) degrees Fahrenheit or below.

(6) Describes how the packages shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(A) maintain the food at forty-one (41) degrees Fahrenheit or below; and

(B) discard the food if within fourteen (14) calendar days of its packaging it is not sold for consumption.

(7) Limits the shelf life to no more than fourteen (14) calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first.

(8) Includes operational procedures that:

(A) prohibit contacting food with bare hands;

(B) identify a designated area and the method by which:

(i) physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination; and

(ii) access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and

(C) delineate cleaning and sanitization procedures for food-contact surfaces.

(9) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

(A) concepts required for a safe operation;

(B) equipment and facilities; and

(C) procedures specified under subdivisions (2) and (8).

(Indiana State Department of Health; 410 IAC 7-21-46)

410 IAC 7-21-47 Acidified foods

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 47. A wholesale food establishment that processes acidified foods shall employ appropriate quality control procedures to ensure that finished foods do not present a health hazard as follows:

(1) All operators of processing and packaging systems shall be under the operating supervision of a person who has:

(A) attended a school giving instruction in food-handling techniques, food-protection principles, personal hygiene and plant sanitation practices, pH controls and critical factors in acidification; and

(B) been identified by that school as having satisfactorily completed the prescribed course of instruction.

A United States Food and Drug Administration (FDA) sponsored Better Processing Control School is an approved school. Other equivalent schools approved by the department may be attended. The department shall consider students who have satisfactorily completed required portions of the school to be in compliance with the requirement of this subdivision.

(2) Acidified foods shall be manufactured, processed, and packaged so that a finished equilibrium pH value of 4.6 or lower is achieved within the time designated in the scheduled process and maintained in all finished foods. Manufacturing shall be in accordance with the scheduled process. Acidified foods shall be thermally processed to an extent that is sufficient to destroy the vegetative cells of microorganisms of public health significance and those of nonhealth significance, such as yeast and mold, capable of reproducing in the food under the conditions in which the food is stored, distributed, retailed, and held by the user. FDA approved preservatives may be used to inhibit reproduction of microorganisms of nonhealth significance in lieu of thermal processing.

(3) Sufficient control, including frequent testing and recording of results, shall be exercised so that the finished equilibrium pH values for acidified foods are not higher than 4.6. Measurement of acidity of foods in process may be made by potentiometric methods, titratable acidity, or colorimetric methods. If the finished equilibrium pH of the food is above 4.0, the measurement of the finished equilibrium pH shall be by a potentiometric method, and the in-process measurements by titration or colorimetry shall be related to the finished equilibrium pH. If the finished equilibrium pH is 4.0 or below, then the measurement of acidity of the final product may be made by any suitable method. When food ingredients have been subjected to lye, lime, or similar high pH materials, they may alter the pH of the product.

(4) Procedures for acidification to attain acceptable equilibrium pH levels in the final food include, but are not limited to, the following:

(A) Blanching of the food ingredients in acidified aqueous solutions.

(B) Immersion of the blanched food in acid solutions. Although immersion of food in an acid solution is a satisfactory method for acidification, process controls

must be taken to ensure that the acid concentration is properly maintained.

(C) Direct batch acidification, which can be achieved by adding a known amount of an acid solution to a specified amount of food during acidification.

(D) Direct addition of a predetermined amount of acid to individual containers during production. Liquid acids are generally more effective than solid or pelleted acids. Process controls must be taken to ensure that the proper amount of acid is added to each container.

(E) Addition of acid foods to low-acid foods in controlled proportions to conform to specific formulations.

(5) Testing and examinations of containers shall occur often enough to ensure that the container suitably protects the food from leakage or contamination.

(6) pH meters shall be standardized to get an accurate pH measurement. The directions for standardization and storage supplied by the manufacturer of the equipment shall be followed.

(7) Each container or product shall be marked with an identifying code permanently visible to the naked eye. If the container does not permit the code to be embossed or inked, the label may be legibly perforated or otherwise marked, as long as the label is securely affixed to the product container. The required identification shall specify in code the wholesale food establishment where the product was packed, the product contained therein, and the year, day, and period during which it was packed. The packing period code shall be changed often enough to enable ready identification of lots during their sale and distribution. Codes may be changed periodically on one (1) of the following bases:

(A) Intervals of four (4) to five (5) hours.

(B) Personnel shift changes.

(C) Batches, as long as the containers constituting the batch do not represent those processed during more than one (1) personnel shift.

(8) A qualified person who has expert knowledge acquired through appropriate training and experience in the acidification and processing of acidified foods shall establish the scheduled process and be considered a processing authority. A written document or published paper prepared by experts in acidified food processing, such as the "Ball Canning Book," may qualify. Any modifications to a process listed in a document or paper shall be substantiated by a qualified person and that person shall be listed as the processing authority. Copies of the scheduled process shall be kept at the facility.

(9) Whenever any process operation deviates from the scheduled process for any acidified food and/or the equilibrium pH of the finished product is higher than 4.6, the commercial processor of the acidified food shall do any of the following:

(A) Fully reprocess that portion of the food by a process established by a competent processing authority as effective to ensure a safe product.

(B) Thermally process the food as a low-acid food under 21 CFR 113.

(C) Set aside that portion of the food involved for further evaluation as to any potential public health significance. The evaluation shall be made by a competent processing authority and shall be in accordance with procedures recognized by competent processing authorities as being adequate to detect any potential hazard to public health. Unless the evaluation demonstrates that the food has undergone a process that has rendered it safe, the food set aside shall either be fully reprocessed to render it safe, or be destroyed. A record shall be made of the procedures used in the evaluation and the results. Either upon completion of full reprocessing and the attainment of a safe food, or after the determination that no significant microorganisms for public health hazard exists, that portion of the food involved may be shipped in normal distribution. Otherwise, the portion of the food involved shall be destroyed.

(10) Records shall be maintained of examinations of raw materials, packaging materials, and finished products and of suppliers' guarantees or certifications that verify compliance with this rule.

(11) Processing and production records showing adherence to scheduled processes, including records of pH measurements and other critical factors intended to ensure a safe product, shall be maintained and shall contain sufficient additional information, such as product code, date, container size, and product, to permit a public health hazard evaluation of the processes applied to each lot, batch, or other portion of production.

(12) Records shall be kept of all departures from scheduled processes having a possible bearing on public health or the safety of the food. The records shall delineate the action taken and the final disposition of the product involved.

(13) Records shall be maintained identifying initial distribution of the finished product to facilitate, when necessary, the segregation of specific food lots that may have become contaminated or otherwise unfit for their intended use.

(14) If a processor makes an electronic record of pH by connection of the pH meter to a computer or by manually keying the pH values into a computer as the primary record, then that record is subject to 21 CFR 11.

(15) Copies of all records provided for in subdivisions (10) through (14) shall be retained at the processing plant or other reasonable, accessible location for a period of three (3) years from the date of manufacture.

(Indiana State Department of Health; 410 IAC 7-21-47)

410 IAC 7-21-48 Warehousing and distribution

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 48. Storage and transportation of finished food shall

be under conditions that will protect food against physical, chemical, and microbial contamination as well as against deterioration of the food and the container. Potentially hazardous foods shall be transported at the temperatures as specified in section 45(c)(1) of this rule and sections 45(d) through 45(e) of this rule. *(Indiana State Department of Health; 410 IAC 7-21-48)*

410 IAC 7-21-49 Accurate representation of packaged food using standards of identity, honest presentation of food, and food labels

Authority: IC 16-42-5-5
Affected: IC 16-42; IC 16-42-2

Sec. 49. (a) Packaged food shall comply with standard of identity requirements in 21 CFR 130 through 21 CFR 169.

(b) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(c) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of the food.

(d) Food packaged or stored in a wholesale food establishment shall be labeled as specified in law, including the following:
(1) IC 16-42-1.
(2) IC 16-42-2.
(3) 410 IAC 7-5.
(4) 21 CFR 101.

(e) Label information shall include the following:
(1) The common name of the food or, absent a common name, an adequately descriptive identity statement.
(2) If made from two (2) or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food.
(3) An accurate declaration of the quantity of contents as required in 410 IAC 12-1.
(4) The name and place of business of the manufacturer, packer, or distributor.
(Indiana State Department of Health; 410 IAC 7-21-49)

410 IAC 7-21-50 Public health protection; access; reporting imminent health hazards

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 50. (a) The department shall uniformly apply this rule to all wholesale food establishments in a reasonable manner that promotes its underlying purpose of safeguarding public health and ensuring that food is safe, not misbranded, unadulterated, and honestly presented when offered to the consumer.

(b) Facilities and equipment that were installed prior to the effective date of this rule, that do not fully meet all of the design and fabrication requirements, shall be deemed acceptable in that wholesale food establishment if it is in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces are nontoxic.

(c) After the department presents official credentials and expresses an intent to inspect, investigate, or collect food samples, the supervisory personnel shall allow the department access to the establishment during the establishment's hours of operation and other reasonable times. Information and records to which the department is entitled according to law and are specified in this rule shall be provided upon request.

(d) A wholesale food establishment shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency, such as:
(1) a fire;
(2) a flood;
(3) an extended interruption of electrical or water service;
(4) a sewage backup;
(5) a misuse of poisonous or toxic materials;
(6) an onset of an apparent foodborne illness outbreak;
(7) a gross unsanitary occurrence or condition; or
(8) other circumstance that may endanger public health.

(e) Operation need not be discontinued in an area of a wholesale food establishment that is unaffected by the imminent health hazard.

(f) If operations are discontinued as specified under this subsection or otherwise according to law, the wholesale food establishment shall obtain approval from the department before resuming operations. *(Indiana State Department of Health; 410 IAC 7-21-50)*

410 IAC 7-21-51 Registration of a wholesale food establishment

Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 51. (a) A wholesale food establishment that maintains a place of business in Indiana shall file with the department, on forms to be furnished by the department, a written statement of the name and address of the owner, the name of the business, the character of the business, and the business address of each place of business in Indiana.

(b) A new wholesale food establishment shall not be established in Indiana until the place of business has been registered as provided in this subsection. The department shall be notified of intent to operate at least thirty (30) days prior to beginning operations.

(c) If ownership of a registered place of business changes, the new owner shall register the place of business before operating the same.

(d) If the name of the business or the address of a registered place of business changes, the owner shall register the change. *(Indiana State Department of Health; 410 IAC 7-21-51)*

410 IAC 7-21-52 Incorporation by reference
Authority: IC 16-42-5-5
Affected: IC 16-42-5

Sec. 52. (a) The following are hereby incorporated by reference:
(1) 21 CFR 11 (April 1, 2000 Edition).
(2) 21 CFR 110.110 (April 1, 2000 Edition).
(3) 21 CFR 101 (April 1, 2000 Edition).
(4) 21 CFR 113 (April 1, 2000 Edition).
(5) 21 CFR 129 (April 1, 2000 Edition).
(6) 21 CFR 130 through 21 CFR 169 (April 1, 2000 Edition).
(7) 21 CFR 170 through 21 CFR 180 (April 1, 2000 Edition).
(8) 21 CFR 181 through 21 CFR 182, 21 CFR 184, and 21 CFR 186 (April 1, 2000 Edition).
(9) 21 CFR 173.310 (April 1, 2000 Edition).
(10) 21 CFR 173.315 (April 1, 2000 Edition).
(11) 21 CFR 178.1010 (April 1, 2000 Edition).
(12) 21 CFR 178.3570 (April 1, 2000 Edition).

(b) Federal rules, which have been incorporated by reference, do not include any later amendments than those specified in the incorporated citation. Sales of the Code of Federal Regulations are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. *(Indiana State Department of Health; 410 IAC 7-21-52)*

SECTION 2. SECTION 1 of this document takes effect 120 days after filing with the secretary of state.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 10, 2001 at 2:00 p.m., at the Indiana State Department of Health, 2 North Meridian Street, Rice Auditorium, Indianapolis, Indiana the Indiana State Department of Health will hold a public hearing on proposed new rules to safeguard public health and assure that food provided to consumers is safe, unadulterated, and honestly presented, and to establish minimum sanitary standards for the operation of wholesale food establishments, which include manufacturers, processors, repackagers, and distributors of food, excluding meat and poultry processors regulated under IC 15-2.1-24; dairy processors, regulated under IC 15-2.1-22, IC 15-2.1-23, and 345 IAC 8; and shell egg plants regulated under 370 IAC 1-10-1 and IC 16-42-11. Copies of these rules are now on file at the Indiana State Department of Health, 2 North Meridian Street, 5th Floor and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gregory A. Wilson, M.D.
State Health Commissioner
Indiana State Department of Health

TITLE 590 INDIANA LIBRARY AND HISTORICAL BOARD

Proposed Rule
LSA Document #01-108

DIGEST

Adds 590 IAC 4 to establish new standards for librarian certification. Repeals 595 IAC 1. Effective 30 days after filing with the secretary of state.

590 IAC 4
595 IAC 1

SECTION 1. 590 IAC 4 IS ADDED TO READ AS FOLLOWS:

ARTICLE 4. LIBRARIAN CERTIFICATION

Rule 1. General Provisions

590 IAC 4-1-1 Library certification law
Authority: IC 20-14-12-3
Affected: IC 20-14-12-4

Sec. 1. IC 20-14-12-4 refers to all professional positions as distinguished from clerical positions that do not require certification. See the definition of professional position at 590 IAC 4-2-10. *(Indiana Library and Historical Board; 590 IAC 4-1-1)*

590 IAC 4-1-2 Authority of certification board
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 2. The board, in accordance with IC 20-14-12, makes the final determination as to what grades of certificate are required for directors or head librarians of public libraries *(Indiana Library and Historical Board; 590 IAC 4-1-2)*

590 IAC 4-1-3 Validity of old certificates
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 3. A librarian in position and holding a permanent certificate under 595 IAC 1, which was repealed in 2001, will not be required to obtain a new certificate issued under this article. Their present certificate will remain fully valid for their present position and for any other position that the

certificate originally covered. They may obtain a new certificate, at their own option, provided they fully meet the required qualifications for the grade of certificate sought, and provided such new certificate is applied for and processed in the same manner as other certificates issued under this article. *(Indiana Library and Historical Board; 590 IAC 4-1-3)*

590 IAC 4-1-4 Life certificate
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 4. Any certificate issued on the basis of prescribed qualifications is designated as a life certificate. *(Indiana Library and Historical Board; 590 IAC 4-1-4)*

590 IAC 4-1-5 Exempt librarians and voluntary certification
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 5. A certificate issued by the board is not required, under the law, for appointment to positions in school libraries and libraries of educational institutions. A librarian in such a library or in any private library may voluntarily make application for a certificate. If the applicant is found to be qualified for the grade of certificate requested, the applicant shall be given the certificate in the same manner and subject to the same conditions as pertain to certificates of librarians in public libraries. As used in this section, "private library" means any library not supported by public funds. *(Indiana Library and Historical Board; 590 IAC 4-1-5)*

590 IAC 4-1-6 Military service
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 6. Any service in the Armed Forces shall be accepted in lieu of library experience provided an applicant held a professional library position prior to his or her military service and at that time held qualifications entitling him or her to an Indiana library certificate. *(Indiana Library and Historical Board; 590 IAC 4-1-6)*

590 IAC 4-1-7 Reciprocity
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 7. Anyone presenting a certificate for public library service from any other state shall be required to obtain an Indiana certificate in order to qualify for public library service in Indiana. In granting this certificate, due recognition shall be given to a certificate that may be presented from the other state in terms of the special qualifications it represents as these qualifications apply under the certification requirements of Indiana. In all cases due consideration will be given to the educational standards and recommendations of the American Library Association. *(Indiana Library and Historical Board; 590 IAC 4-1-7)*

Rule 2. Definitions

590 IAC 4-2-1 Applicability
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 1. The definitions in this rule apply throughout this article. *(Indiana Library and Historical Board; 590 IAC 4-2-1)*

590 IAC 4-2-2 "Accredited college or university" defined
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 2. "Accredited college or university" means a college or university that qualifies for membership in the North Central Association of Colleges and Schools or other regional or national associations of similar rank. These associations and the institutions they have accredited are listed in the latest edition of the publication "Accredited Institutions of Higher Education" 1974 (and later), issued annually by the United States Office of Education. *(Indiana Library and Historical Board; 590 IAC 4-2-2)*

590 IAC 4-2-3 "Accredited library education" defined
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 3. "Accredited library education" means completion of at least one (1) year of professional study on the graduate level taken in an American Library Association accredited library school and validated by a diploma or certificate. *(Indiana Library and Historical Board; 590 IAC 4-2-3)*

590 IAC 4-2-4 "Accredited library school" defined
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 4. "Accredited library school" means a professional school of librarianship that is approved by the Committee on Accreditation of the American Library Association, or a school that was approved at the time courses were taken that are submitted to fulfill the Indiana certification requirements. Accredited status is retroactive to cover the academic year preceding the one in which the accreditation visit to the library school was made. *(Indiana Library and Historical Board; 590 IAC 4-2-4)*

590 IAC 4-2-5 "Administrative experience" defined
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 5. "Administrative experience" means experience attained as a director or head librarian or by supervising the work of other persons, at least two (2) of whom have

professional status, or a valid equivalent of such experience that is accepted by the board. *(Indiana Library and Historical Board; 590 IAC 4-2-5)*

590 IAC 4-2-6 "Approved library science education" defined

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 6. "Approved library science education" means elementary instruction in library science taken, after completion of two (2) years of academic education, in an institution approved to give such library science instruction. This approval may be either accreditation of the institution by the American Library Association to give graduate library education, or approval by the Indiana state commission on higher education to give graduate or undergraduate courses in library science. Such approved Indiana courses in library science taken in fulfillment of the Indiana teachers' licensing requirements for school library service shall be accepted for purposes of public library certification, except as established in section 9(2)(A) of this rule with respect to the requirement of a course in public library administration for a director or head librarian of a public library. Similar approved courses in library science taken outside of Indiana may be accepted at the discretion of the board. *(Indiana Library and Historical Board; 590 IAC 4-2-6)*

590 IAC 4-2-7 "Board" defined

Authority: IC 20-14-12-3
Affected: IC 4-23-7-2; IC 20-14-12

Sec. 7. "Board" means the Indiana library and historical board as established under IC 4-23-7-2 *(Indiana Library and Historical Board; 590 IAC 4-2-7)*

590 IAC 4-2-8 "College credits" defined

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 8. "College credits" means the computation of the number of years of academic college work. Thirty (30) semester hours or forty-five (45) quarter hours is considered a year of work, provided, however, that the award of a baccalaureate degree is required as evidence of completion of four (4) years of college work. *(Indiana Library and Historical Board; 590 IAC 4-2-8)*

590 IAC 4-2-9 "Creditable library education" defined

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 9. "Creditable library education" refers to the kind and the amount of library education, which, together with academic education and creditable experience, is recognized by the board in determining the grade of certificate to be granted. The board recognizes the following types of library education:

(1) Accredited library education, as defined in section 3 of this rule, which requires at least one (1) year of professional study beyond the baccalaureate degree. This professional education relates to the higher grades of Indiana library certificates.

(2) Approved library science education, as defined in section 6 of this rule, which requires designated amounts of study in library science and relates to the lower grades of Indiana library certificates. Two (2) levels of such study are recognized and are designated as intermediate library education and minimum library education as follows:

(A) As used in this section, "intermediate library education" means at least fifteen (15) semester hours or twenty (20) quarter hours of approved library science education and shall consist of courses embracing five (5) areas of study, namely:

(i) selection and evaluation of media;

(ii) cataloging and organization of materials;

(iii) public library administration, reference, and information sources; and

(iv) children's materials;

at least three (3) semester hours or four (4) quarter hours each. Persons who are not candidates for administrative positions may substitute some other course approved by the board for the course in public library administration. Certificates will show such substitution. Subsequent eligibility to a position of director or head librarian shall require removal of the deficiency by taking the specified course. Intermediate library education is recognized as basic general preparation for librarianship that meets specified certification requirements above the level of minimum library education.

(B) As used in this section, "minimum library education" means at least nine (9) semester hours or twelve (12) quarter hours of approved library science education, taken after completion of two (2) years of academic education in an accredited college or university. This education is designated to meet the minimum essential needs of small public libraries for purposes of certifying positions of director or head librarian. As such, minimum library education shall consist of courses embracing three (3) areas of study, namely:

(i) selection and evaluation of media;

(ii) reference and information sources; and

(iii) public library administration;

at least three (3) semester hours or four (4) quarter hours each. The same provisions relating to substitution for the course in public library administration shall apply to minimum library education as apply to intermediate library education.

(Indiana Library and Historical Board; 590 IAC 4-2-9)

590 IAC 4-2-10 "Professional position" defined

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 10. "Professional position" means a position in which a person devotes more than half of his or her time to work that calls for:

(1) a knowledge of books and other library materials and of technical library processes; and

(2) the ability to deal with people in a professional capacity as distinguished from clerical.

(Indiana Library and Historical Board; 590 IAC 4-2-10)

590 IAC 4-2-12 "Specialist education" defined

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 12. "Specialist education" means study beyond the secondary level in subject areas that provide specialized expertise in libraries, including, but not limited to, business administration, history, fine arts, and audio-visual media. Positions that may be included in the specialist category are as follows:

(1) Business manager.

(2) Archivist.

(3) Computer specialist.

(4) Library media specialist.

(5) Specialist in charge of art collection.

(Indiana Library and Historical Board; 590 IAC 4-2-12)

590 IAC 4-2-13 "Unlawful" defined

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 13. "Unlawful" means, among other things, the unlawful expenditure of public funds for the purpose of employing library personnel. Specifically, and as an example, a library board may be considered to expend public funds unlawfully when it pays a salary to a person occupying a professional position who does not hold a requisite certificate issued by the board. Such failure to observe the law would normally be disclosed at the time of official audit of library accounts. The members of the governing body collectively shall be responsible for the restitution to the funds of the library for which the governing body is responsible of such salaries, fees, reimbursements, or other payments from public funds as have been made to a person not holding the certificate of the required grade or a valid temporary permit. *(Indiana Library and Certification Board; 590 IAC 4-2-13)*

Rule 3. Certification Application; Fees

590 IAC 4-3-1 Minimum requirements

Authority: IC 20-14-12-3
Affected: IC 4-22-2-2; IC 20-14-12

Sec. 1. (a) The director or head librarian, or an officer of the local library board, shall send to the board an application for a certificate for any member of the professional staff who:

(1) is not already certified; or

(2) does not hold the requisite grade of certification for the position occupied.

(b) The application must be on a form prescribed and supplied by the board and shall indicate in the designated place the position occupied by the applicant, attested to by the signature and title of the transmitting official. The application must also indicate in the designated place the grade of certificate requested or proposed for the applicant.

(c) A person who is not presently under employment in an Indiana library may make application for a certificate on the prescribed form in his or her own name without the signature of a library official.

(d) The applicant shall submit to the board official verification of the academic and library education claimed before a certificate is granted.

(e) Certificates will be issued to persons who give proof of qualifications prescribed by the board for a requisite grade of certificate. Application for such certificate shall be made on the prescribed form, accompanied by the prescribed fee as established in section 3 of this rule. Such certificates shall be valid in respect to the level of positions they are designed to cover.

(f) The qualifications in 590 IAC 4-4 for each grade of certificate are considered to be minimum requirements only. Certificates issued therefore represent minimum standards of competence for the various levels of positions. Libraries may require higher qualifications for appointments to their staff, but cannot lawfully appoint to positions persons who have lower qualifications than those called for by the grades of certificates pertaining to the levels of position as prescribed by the board.

(g) Candidates for librarian certificates who lack the amount of academic education specified for a particular grade of certificate are urged to make up the deficiency by attending college or by taking approved examinations designed to test academic equivalencies. The board is prepared to advise candidates on the availability of college courses and college equivalency examinations as recommended means of meeting the academic education requirements for library certificates.

(h) Any candidate for a librarian certificate who has taken an examination (which is no longer offered) and received a passing score will be issued a certificate that reflects credit for the examination. *(Indiana Library Certification Board; 590 IAC 4-3-1)*

590 IAC 4-3-2 Temporary permits

Authority: IC 20-14-12-3
Affected: IC 4-22-2-2; IC 20-14-12

Sec. 2. A temporary permit may be issued at the request of a local library board to cover a substitute or temporary employee or an acting appointee who does not at the time of assuming duties fully meet the requirements for the appropriate grade of certificate. Application for such temporary permit must be made within six (6) months after the date of assuming duties. Regardless of the date of such application, the effective date of the first temporary permit shall be the date six (6) months after first assuming the duties of the covered position. A temporary permit is valid for one (1) year only. It cannot be renewed except by special authorization of the board. Application for such renewal shall be approved and requested by the local library board and shall be accompanied by a statement indicating progress toward meeting the requirements for the requisite permanent certificate. A temporary permit will not be issued to a director or head librarian who does not have the qualifications for the grade immediately below the one for which application is being made, with the exception of Librarian V. In no case shall a temporary permit for the position of director or head librarian be renewed more than twice. Application for a temporary permit shall be made on the regular form prescribed for all certificates and shall be accompanied by the prescribed fee as established in section 3 of this rule. *(Indiana Library Certification Board; 590 IAC 4-3-2)*

590 IAC 4-3-3 Fees
Authority: IC 20-14-12-3
Affected: IC 4-22-2-2; IC 20-14-12

Sec. 3. The fee for a permanent or temporary certification shall be one dollar ($1). *(Indiana Library Certification Board; 590 IAC 4-3-3)*

Rule 4. Certification Requirements

590 IAC 4-4-1 Certification plan
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 1. The population figures used in this rule are those figures officially released in the latest United States decennial census. *(Indiana Library and Historical Board; 590 IAC 4-4-1)*

590 IAC 4-4-2 Librarian I
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 2. (a) The Librarian I position shall be the required minimum grade of certificate for directors or head librarians of libraries serving a population greater than one hundred fifty thousand (150,000), and for other comparable professional positions as determined by the board.

(b) Qualification requirements for the Librarian I position are as follows:
(1) Graduation from an accredited college or university.
(2) One (1) year of accredited library education.
(3) Ten (10) years of library experience, or six (6) years of library experience, including at least three (3) years of administrative experience, after attaining eligibility for a Librarian III certificate.
(Indiana Library and Historical Board; 590 IAC 4-4-2)

590 IAC 4-4-3 Librarian II
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 3. (a) The Librarian II position shall be the required minimum grade of certificate for directors or head librarians of libraries serving a population of from twenty-five thousand one (25,001) to one hundred fifty thousand (150,000), and for other comparable professional positions as determined by the board.

(b) Qualification requirements for the Librarian II position are as follows:
(1) Graduation from an accredited college or university.
(2) One (1) year of accredited library education.
(3) Three (3) years of library experience, after attaining eligibility for a Librarian III certificate.
(Indiana Library and Historical Board; 590 IAC 4-4-3)

590 IAC 4-4-4 Librarian III
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 4. (a) The Librarian III position shall be the required minimum grade of certificate for directors or head librarians of libraries serving a population of from ten thousand one (10,001) to twenty-five thousand (25,000), and for other comparable professional positions as determined by the board.

(b) Qualification requirements for the Librarian III position are as follows:
(1) Graduation from an accredited college or university.
(2) One (1) year of accredited library education.
(Indiana Library and Historical Board; 590 IAC 4-4-4)

590 IAC 4-4-5 Librarian IV
Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 5. (a) The Librarian IV position shall be the required minimum grade of certificate for directors or head librarians of libraries serving a population of from five thousand one (5,001) to ten thousand (10,000), and for other comparable professional positions as determined by the board.

(b) Qualification requirements for the Librarian IV position are as follows:
(1) Bachelor's degree from an accredited college or university.

(2) At least fifteen (15) semester hours or twenty (20) quarter hours of approved library education.

(Indiana Library and Historical Board; 590 IAC 4-4-5)

590 IAC 4-4-6 Librarian V

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 6. (a) The Librarian V position shall be the required minimum grade of certificate for directors or head librarians of libraries serving a population of less than five thousand (5,000), and for other comparable professional positions as determined by the board.

(b) Qualification requirements for the Librarian V position are as follows:

(1) Two (2) years of academic education in an accredited college or university.

(2) An additional nine (9) semester hours or twelve (12) quarter hours of approved library education.

(Indiana Library and Historical Board; 590 IAC 4-4-6)

590 IAC 4-4-7 Specialist I

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 7. Specialist I qualification requirements are as follows:

(1) Graduation from an accredited college or university.

(2) Fifth year degree in subject area from an accredited graduate school.

(3) Ten (10) years experience in subject field, or six (6) years of subject experience including at least three (3) years of administrative experience.

(Indiana Library and Historical Board; 590 IAC 4-4-7)

590 IAC 4-4-8 Specialist II

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 8. Specialist II qualification requirements are as follows:

(1) Graduation from an accredited college or university.

(2) Fifth year degree in subject area from an accredited graduate school.

(3) Three (3) years of experience in subject field.

(Indiana Library and Historical Board; 590 IAC 4-4-8)

590 IAC 4-4-9 Specialist III

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 9. Specialist III qualification requirements are as follows:

(1) Graduation from an accredited college or university.

(2) Fifth year degree in subject area from an accredited graduate school.

(Indiana Library and Historical Board; 590 IAC 4-4-9)

590 IAC 4-4-10 Specialist IV

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 10. Specialist IV qualification requirements are as follows:

(1) Bachelor's degree from an accredited college or university.

(2) Fifteen (15) semester hours or twenty (20) quarter hours in relevant subject area.

(Indiana Library and Historical Board; 590 IAC 4-4-10)

590 IAC 4-4-11 Specialist V

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 11. Specialist V qualification requirements are as follows:

(1) Two (2) years of academic education in an accredited college or university.

(2) An additional nine (9) semester hours or twelve (12) quarter hours in relevant subject area.

(Indiana Library and Historical Board; 590 IAC 4-4-11)

590 IAC 4-4-12 Specific positions

Authority: IC 20-14-12-3
Affected: IC 20-14-12

Sec. 12. Local requirements for specific positions shall be set by the local library board. No specific recommendations are appropriate or feasible for particular positions, such as children's librarian, branch librarian, or bookmobile librarian, because too wide a variance in skills and responsibilities is represented in these positions in different library systems throughout the state. It is the responsibility of the local administration to place in such positions certified personnel having the necessary training and experience.

(Indiana Library and Historical Board; 590 IAC 4-4-12)

SECTION 2. 595 IAC 1 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on July 9, 2001 at 10:00 a.m., at the Indianapolis-Marion County Public Library Services Center, Auditorium, 2450 North Meridian Street, Indianapolis, Indiana the Indiana Library and Historical Board will hold a public hearing on proposed new rules concerning librarian certification. Written comments may be sent to Edyth Huffman, Indiana State Library, 140 North Senate Avenue, Indianapolis, Indiana 46204.

Copies of these rules are now on file at the Indiana State Library, 140 North Senate Avenue and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Ray Ewick
Director
Indiana State Library

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #01-93

DIGEST

Amends 760 IAC 2-10-1 to conform to IC 27-1-15.5-3, as amended by P.L.48-2000, and to clarify continuing education requirements for insurance agents. Effective 30 days after filing with the secretary of state.

760 IAC 2-10-1

SECTION 1. 760 IAC 2-10-1 IS AMENDED TO READ AS FOLLOWS:

760 IAC 2-10-1 Licensing
Authority: IC 27-8-12-7
Affected: IC 27-1-15.5-3; IC 27-1-15.5-7.1

Sec. 1. (a) ~~Effective July 1, 1993,~~ No agent is authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing long term care insurance ~~unless~~ **until** the agent has successfully passed eight (8) hours of approved continuing education courses in long term care and long term care insurance.

~~(b) In order to comply with the~~ **An agent who completes the eight (8) hours of** continuing education ~~requirement initially prescribed~~ **required** by **this** subsection ~~(a), an agent shall successfully complete eight (8) hours of approved continuing education courses biennially from July 1, 1993.~~ **during the first two (2) years of a four (4) year license shall also comply with subsection (b) during the second two (2) years of the license.**

(b) An agent shall successfully complete five (5) hours of approved continuing education in long term care or long term care insurance every two (2) years for a total of ten (10) hours in every four (4) year license renewal period.

(c) Continuing education courses completed pursuant to subsections (a) and (b) may be used to satisfy the continuing education requirements set forth in IC 27-1-15.5-7.1.

~~(c)~~ **(d)** Each insurer shall require an agent to provide documentation certifying that the agent has satisfied the requirements of this rule prior to accepting applications from the agent or paying the agent commission for the sale of long term care coverage. *(Department of Insurance; 760 IAC 2-10-1; filed Oct. 30, 1992, 12:00 p.m.: 16 IR 865)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 27, 2001 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on proposed amendments to reflect changes in Indiana law regarding insurance agent continuing education. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance

TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #01-94

DIGEST

Adds 760 IAC 1-67 regarding the treatment of an individual's nonpublic personal information by all licensees of the department of insurance, including notice of privacy policies and practices, conditions for disclosure of nonpublic information to third parties, and methods for an individual to prevent disclosure of nonpublic information. Effective 30 days after filing with the secretary of state.

760 IAC 1-67

SECTION 1. 760 IAC 1-67 IS ADDED TO READ AS FOLLOWS:

Rule 67. Privacy of Consumer Information

760 IAC 1-67-1 Applicability and scope
Authority: IC 27-1-3-7
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 1. (a) This rule applies to nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees of the department of insurance.

(b) This rule does not apply to information about companies or about individuals who:
(1) obtain products or services for business, commercial, or agricultural purposes; or
(2) are claiming benefits under a policy described in subsection (1).
(Department of Insurance; 760 IAC 1-67-1)

760 IAC 1-67-2 Definitions
Authority: IC 27-1-3-7
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5-5; IC 27-1-15.6; IC 27-1-15.8; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 2. The following definitions apply throughout this rule:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice. The following are examples that meet this standard:

(A) A licensee makes its notice reasonably understandable if it does the following:

(i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections.

(ii) Uses short explanatory sentences or bullet lists whenever possible.

(iii) Uses definite, concrete, everyday words and active voice whenever possible.

(iv) Avoids multiple negatives.

(v) Avoids legal and highly technical business terminology whenever possible.

(vi) Avoids explanations that are imprecise and readily subject to different interpretations.

(B) A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee does the following:

(i) Uses a plain-language heading to call attention to the notice.

(ii) Uses a typeface and type size that are easy to read.

(iii) Provides wide margins and ample line spacing.

(iv) Uses boldface or italics for key words.

(v) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(C) If a licensee provides a notice on a Web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the Web site, such as text, graphics, hyperlinks, or sound, do not distract attention from the notice, and the licensee does either of the following:

(i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted.

(ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the commissioner of the Indiana department of insurance.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization.

(6) "Consumer" means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative, including the following:

(A) An individual provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(B) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(C) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(D) An individual is a licensee's consumer if the individual is:

(i) a beneficiary of a life insurance policy underwritten by the licensee;

(ii) a claimant under an insurance policy issued by the licensee;

(iii) an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(iv) a mortgagor of a mortgage covered under a mortgage insurance policy;

and the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under sections 12 through 14 of this rule.

(E) Provided that the licensee provides the initial, annual, and revised notices under sections 3, 4, and 7 of this rule to the plan sponsor, group, or blanket insurance policyholder or group annuity contractholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under sections 12 through 14 of this rule, an individual is not the consumer of the licensee solely because he or she is:

(i) a participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary; or

(ii) covered under a group or blanket insurance policy or group annuity contract issued by the licensee.

(F) The individuals described in clause (E) are consumers of a licensee if the licensee does not meet all the conditions of this subdivision. In no event shall the

individuals, solely by virtue of the status described in clause (E), be deemed to be customers.

(G) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(H) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means any of the following:

(A) Ownership, control, or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one (1) or more other persons.

(B) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of the company.

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee. A beneficiary or a claimant shall not be deemed a customer solely by virtue of his or her status as a beneficiary or a claimant.

(10) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one (1) or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes, including the following:

(A) A consumer has a continuing relationship with a licensee if the consumer:

(i) is a current policyholder of an insurance product issued by or through the licensee; or

(ii) obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee.

(B) A consumer does not have a continuing relationship with a licensee in any of the following circumstances:

(i) The consumer applies for insurance but does not purchase the insurance.

(ii) The licensee sells the consumer airline travel insurance in an isolated transaction.

(iii) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(iv) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a policy choosing a settlement option involving an ongoing relationship with the licensee.

(v) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option.

(vi) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials.

(vii) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity.

(viii) For purposes of this rule, the individual's last known address, according to the licensee's records, is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). The term does not include any of the following:

(A) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. 1 et seq.

(B) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971, 12 U.S.C. 2001 et seq.

(C) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights), or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health information" means any information or data, except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to any of the following:

(A) The past, present, or future physical, mental, or behavioral health or condition of an individual.

(B) The provision of health care to an individual.

(C) Payment for the provision of health care to an individual.

(14) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state. Insurance service includes a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service.

(15) "Licensee" means all licensed insurers, health maintenance organizations, agents, producers, and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered under IC 27. The following requirements apply:

(A) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in section 1 of this rule, this section, and sections 3 through 15 of this rule if the licensee is an employee, agent, or other representative of another licensee and:

(i) the other licensee otherwise complies with, and provides the notices required by this rule; and

(ii) the licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this rule.

(B) A licensee also includes an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to IC 27-1-15.5-5. A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in section 1 of this rule, this section, and sections 3 through 15 of this rule provided the following:

(i) The surplus lines agent or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under section 12 of this rule, except as permitted by section 13 or 14 of this rule.

(ii) The surplus lines agent or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

NEITHER THE U.S. SURPLUS LINES AGENTS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

(16) "Nonaffiliated third party" means any person except a licensee's affiliate or a person employed jointly by a licensee and any company that is not the licensee's affiliate. The term includes either of the following:

(A) The other company that jointly employs the person.

(B) Any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities or insurance company investment activities of the type described in the federal Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(H) and 12 U.S.C. 1843(k)(4)(I).

(17) "Nonpublic personal financial information" means personally identifiable financial information and any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available, including the following:

(A) The term includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(B) The term does not include any of the following:

(i) Health information.

(ii) Publicly available information, except as included on a list described in subdivision (21).

(iii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(C) The term does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(18) "Nonpublic personal information" means nonpublic personal financial information.

(19) "Personally identifiable financial information" means information a consumer provides to a licensee to obtain an insurance product or service from the licensee, information about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer, or information the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer, including the following:

(A) The term includes the following:

(i) Information a consumer provides to a licensee on an application to obtain an insurance product or service.

(ii) Account balance information and payment history.

(iii) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee.

(iv) Any information about the licensee's consumer if

it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer.

(v) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(vi) Any information the licensee collects through an Internet cookie (an information-collecting device from a Web server).

(vii) Information from a consumer report.

(B) The term does not include the following:

(i) Health information.

(ii) A list of names and addresses of customers of an entity that is not a financial institution.

(iii) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers, such as account numbers, names, or addresses.

(20) "Producer" means a person licensed under IC 27-1-15.5, IC 27-1-15.6, or IC 27-1-15.8.

(21) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state, or local government records, widely distributed media, or disclosures to the general public that are required to be made by federal, state, or local law. The following requirements apply:

(A) A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine that the information is of the type that is available to the general public and whether an individual can direct that the information not be made available to the general public, and, if so, that the licensee's consumer has not done so.

(B) Publicly available information in government records includes information in government real estate records and security interest filings.

(C) Publicly available information from widely distributed media includes information from a:

(i) telephone book;

(ii) television;

(iii) radio program;

(iv) newspaper; or

(v) Web site;

that is available to the general public on an unrestricted basis. A Web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(D) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(E) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

(Department of Insurance; 760 IAC 1-67-2)

760 IAC 1-67-3 Initial privacy notice to consumers

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 3. (a) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to the following:

(1) An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (e).

(2) A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by sections 13 and 14 of this rule.

(b) A licensee is not required to provide an initial notice to a consumer under subsection (a) in either of the following instances:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by sections 13 and 14 of this rule, and the licensee does not have a customer relationship with the consumer.

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(c) A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship. The following are examples of establishing customer relationship:

(1) The consumer becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance agent, obtains insurance through that licensee.

(2) The consumer agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(d) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee satisfies the initial notice requirements of subsection (a) if:

(1) the licensee may provide a revised policy notice, under section 7 of this rule, that covers the customer's new insurance product or service; or

(2) the initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subsection (a).

(e) The following are exceptions that allow subsequent delivery of the required notice:

(1) A licensee may provide the initial notice required by subsection (a)(1) within a reasonable time after the licensee establishes a customer relationship if:

(A) establishing the customer relationship is not at the customer's election; or

(B) providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) The following are examples of exceptions:

(A) Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(B) Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(C) Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a Web site.

(f) When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to section 8 of this rule. If the licensee uses a short-form initial notice for noncustomers according to section 5(d) of this rule, the licensee may deliver its privacy notice according to section 5(d)(3) of this rule. *(Department of Insurance; 760 IAC 1-67-3)*

760 IAC 1-67-4 Annual privacy notice to customers

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 4. (a) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship.

(1) As used in this section, "annually" means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve (12) consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(2) A licensee provides a notice annually if it defines the twelve (12) consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of Year 1, the licensee shall provide an annual notice to that customer by December 31 of Year 2.

(b) A licensee is not required to provide an annual notice to a former customer. As used in this section, "former customer" means an individual with whom a licensee no longer has a continuing relationship and includes the following:

(1) The individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(2) The individual's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(3) An individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(4) In the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(c) When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to section 8 of this rule. *(Department of Insurance; 760 IAC 1-67-4)*

760 IAC 1-67-5 Information to be included in privacy notices

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 5. (a) The initial, annual, and revised privacy notices that a licensee provides under sections 3, 4, and 7 of this rule shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects.

(2) The categories of nonpublic personal financial information that the licensee discloses.

(3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under sections 13 and 14 of this rule.

(4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under sections 13 and 14 of this rule.

(5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under section 12 of this rule (and no other exception in sections 13 and 14 of this rule applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted.

(6) An explanation of the consumer's right under section 9(a) of this rule to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time.

(7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(d)(2)(A)(iii), regarding the ability to opt out of disclosures of information among affiliates.

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

(9) Any disclosure that the licensee makes under subsection (b).

(b) If a licensee discloses nonpublic personal financial information as authorized under sections 13 and 14 of this rule, the licensee is not required to list those exceptions in the initial or annual privacy notices required by sections 3 and 4 of this rule. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(c) The following are examples:

(1) A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable information:

(A) from the consumer;

(B) about the consumer's transactions with the licensee or its affiliates;

(C) about the consumer's transactions with nonaffiliated third parties; and

(D) from a consumer reporting agency.

(2) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in subdivision (1), as applicable, and provides a few examples to illustrate the types of information in each category. These examples might include the following:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address, and Social Security number.

(B) Transaction information, such as information about balances, payment history, and parties to the transaction.

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(3) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer. If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(4) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(A) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking, or securities brokerage.

(B) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(5) If a licensee discloses nonpublic personal financial information under the exception contained in section 12 of this rule to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subsection (a)(5) if it:

(A) lists the categories of nonpublic personal financial information it discloses, using the same categories and

examples the licensee used to meet the requirements of subsection (a)(2), as applicable; and

(B) states whether the third party is a:

(i) service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(ii) financial institution with whom the licensee has a joint marketing agreement.

(6) If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties, except as authorized under sections 13 and 14 of this rule, the licensee may simply state that fact, in addition to the information it shall provide under subsections (a)(1), (a)(8), (a)(9), and (b).

(7) A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(A) Describes in general terms who is authorized to have access to the information.

(B) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(d) A licensee may satisfy the initial notice requirements of sections 3(a)(2) and 6(c) of this rule for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in section 6 of this rule.

(1) A short-form notice shall:

(A) be clear and conspicuous;

(B) state that the licensee's privacy notice is available upon request; and

(C) explain a reasonable means by which the consumer may obtain that notice.

(2) The licensee shall deliver its short-form initial notice according to section 8 of this rule. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to section 8 of this rule.

(3) The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee does either of the following:

(A) Provides a toll free telephone number that the consumer may call to request the notice.

(B) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(e) The licensee's notice may include the following:

(1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose.

(2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the license does not currently disclose, nonpublic financial information.

(f) Sample clauses illustrating some of the notice content required by this section are included in section 17 of this rule. *(Department of Insurance; 760 IAC 1-67-5)*

760 IAC 1-67-6 Form of opt out notice to consumers and opt out methods

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 6. (a) If a licensee is required to provide an opt out notice under section 10(a) of this rule, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section.

(1) The notice shall state all of the following:

(A) The licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party.

(B) The consumer has the right to opt out of that disclosure.

(C) A reasonable means by which the consumer may exercise the opt out right.

(2) The following are examples:

(A) A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee does all of the following:

(i) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in section 5(a)(2) and 5(a)(3) of this rule.

(ii) States that the consumer can opt out of the disclosure of that information.

(iii) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(B) A licensee provides a reasonable means to exercise an opt out right if it does any of the following:

(i) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice.

(ii) Includes a reply form together with the opt out notice.

(iii) Provides an electronic means to opt out, such as

a form that can be sent via electronic mail or a process at the licensee's Web site, if the consumer agrees to the electronic delivery of information.

(iv) Provides a toll free telephone number that consumers may call to opt out.

(C) A licensee does not provide a reasonable means of opting out if the only means of opting out:

(i) is for the consumer to write his or her own letter to exercise that opt out right; or

(ii) as described in any notice subsequent to the initial notice, is to use a check-off box that the licensee provided with the initial notice, but did not include with the subsequent notice.

(D) A licensee may require each consumer to opt out through a specific means as long as that means is reasonable for that consumer.

(b) A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with section 3 of this rule.

(c) If a licensee provides the opt out notice later than required for the initial notice in accordance with section 3 of this rule, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(d) The following apply to joint relationships:

(1) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer.

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(A) treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one (1) of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) The following example is illustrative. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(A) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(B) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(C) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) it shall permit John and Mary to opt out for each other;

(ii) if both opt out, the licensee shall permit both of them to notify it in a single response; and

(iii) if John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(e) A licensee shall comply with the consumer's opt out direction as soon as reasonably practicable after it is received by the licensee.

(f) A consumer may exercise the right to opt out at any time.

(g) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically. When a consumer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to section 8 of this rule. *(Department of Insurance; 760 IAC 1-67-6)*

760 IAC 1-67-7 Revised privacy notices

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 7. (a) Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under section 3 of this rule unless the:

(1) licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) licensee has provided to the consumer a new opt out notice;

(3) licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) consumer does not opt out.

(b) Except as otherwise permitted by sections 12 through 14 of this rule, a licensee shall provide a revised notice before it does any of the following:

(1) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party.

(2) Discloses nonpublic personal financial information to a new category of nonaffiliated third party.

(3) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(c) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

(d) When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to section 8 of this rule. *(Department of Insurance; 760 IAC 1-67-7)*

760 IAC 1-67-8 Delivery

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 8. (a) A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) A licensee may reasonably expect that a consumer will receive actual notice if the licensee does any of the following:

(1) Hand delivers a printed copy of the notice to the consumer.

(2) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing, or other written communication.

(3) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service.

(4) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(c) A licensee may not reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it does either of the following:

(1) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices.

(2) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(d) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if the customer:

(1) uses the licensee's Web site to access insurance products and services electronically and agrees to receive notices at the Web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the Web site; or

(2) has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(e) A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(f) For customers only, a licensee shall provide the initial notice required by section 3(a)(1) of this rule, the annual notice required by section 4(a) of this rule, and the revised notice required by section 7 of this rule so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee does any of the following:

(1) Hand delivers a printed copy of the notice to the customer.

(2) Mails a printed copy of the notice to the last known address of the customer.

(3) Makes its current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the Web site.

(g) A licensee may provide a joint notice from the licensee and one (1) or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(h) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of sections 3(a), 4(a), and 7(a) of this rule, by providing one (1) notice to those consumers jointly. *(Department of Insurance; 760 IAC 1-67-8)*

760 IAC 1-67-9 Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 9. (a) Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless the:

(1) licensee has provided to the consumer an initial notice as required under section 3 of this rule;

(2) licensee has provided to the consumer an opt out notice as required in section 6 of this rule;

(3) licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) consumer does not opt out.

(b) Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by sections 12 through 14 of this rule.

(c) A licensee provides a consumer with a reasonable opportunity to opt out if the licensee does any of the following:

(1) The licensee mails the notices required in subsection (a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(2) A customer opens an on-line account with a licensee and agrees to receive the notices required in subsection (a) electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(3) For an isolated transaction, such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subsection (a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(d) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship. Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(e) A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out. *(Department of Insurance; 760 IAC 1-67-9)*

760 IAC 1-67-10 Limits on redisclosure and reuse of nonpublic personal financial information

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 10. (a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in section 13 or 14 of this rule, the licensee's disclosure and use of that information is limited as follows:

(1) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information.

(2) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information.

(3) The licensee may disclose and use the information pursuant to an exception in section 13 or 14 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

For example, if a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(b) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in section 13 or 14 of this rule, the licensee may disclose the information only to:

(1) the affiliates of the financial institution from which the licensee received the information;

(2) its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(3) any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

For example, if a licensee obtains a customer list from a

nonaffiliated financial institution outside of the exceptions in section 13 or 14 of this rule, the licensee may use that list for its own purposes, and the licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in section 13 or 14 of this rule, such as to the licensee's attorneys or accountants.

(c) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in section 13 or 14 of this rule, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the licensee's affiliates.

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information.

(3) The third party may disclose and use the information pursuant to an exception in section 13 or 14 of this rule in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in section 13 or 14 of this rule, the third party may disclose the information only to:

(1) the licensee's affiliates;

(2) the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) any other person, if the disclosure would be lawful if the licensee made it directly to that person.

(Department of Insurance; 760 IAC 1-67-10)

760 IAC 1-67-11 Limits on sharing account number information for marketing purposes

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 11. (a) A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(b) Subsection (a) does not apply if a licensee discloses a policy number or similar form of access number or access code to any of the following:

(1) The licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account.

(2) A licensee who is a producer solely in order to perform marketing for the licensee's own products or services.

(3) A participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(c) A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(d) For purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges. *(Department of Insurance; 760 IAC 1-67-11)*

760 IAC 1-67-12 Exception to opt out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 12. (a) The opt out requirements in sections 6 and 9 of this rule do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(1) provides the initial notice in accordance with section 3 of this rule; and

(2) enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in section 13 or 14 of this rule in the ordinary course of business to carry out those purposes.

For example, if a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institu-

tion meets the requirements of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information, except as necessary to carry out the joint marketing or under an exception in section 13 or 14 of this rule in the ordinary course of business to carry out that joint marketing.

(b) The services a nonaffiliated third party performs for a licensee under subsection (a) may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one (1) or more financial institutions.

(c) As used in this section, "joint agreement" means a written contract pursuant to which a licensee and one (1) or more financial institutions jointly offer, endorse, or sponsor a financial product or service. *(Department of Insurance; 760 IAC 1-67-12)*

760 IAC 1-67-13 Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 13. (a) The requirements for initial notice in section 3(a)(2) of this rule, the opt out in sections 6 and 9 of this rule, and service providers and joint marketing in section 12 of this rule do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with any of the following:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes.

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity.

(3) A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer.

(4) Reinsurance or stop loss or excess loss insurance.

(5) To provide information to the policyholder or the producer who procured the insurance policy with respect to a claim under the insurance policy.

(b) As used in this section, "necessary to effect, administer, or enforce a transaction" means that the disclosure is required, or is either of the following:

(1) One (1) of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service.

(2) A usual, appropriate, or acceptable method to do the following:

(A) Carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service.

(B) Administer or service benefits or claims relating to the transaction or the product or service business of which it is a part.

(C) Provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker.

(D) Accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party.

(E) Underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance:

(i) Account administration.

(ii) Reporting.

(iii) Investigating or preventing fraud or material misrepresentation.

(iv) Processing premium payments.

(v) Processing insurance claims.

(vi) Administering insurance benefits, including utilization review activities.

(vii) Participating in research projects.

(viii) As otherwise required or specifically permitted by federal or state law.

(ix) In connection with any of the following:

(AA) Authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means.

(BB) Transfer of receivables, accounts, or interests therein.

(CC) Audit of debit, credit, or other payment information.

(Department of Insurance; 760 IAC 1-67-13)

760 IAC 1-67-14 Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 14. (a) The requirements for initial notice to consumers in section 3(a)(2) of this rule, the opt out in sections 6 and 9 of this rule, and service providers and joint marketing in section 12 of this rule do not apply when a licensee discloses nonpublic personal financial information as follows:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction.

(2) In any of the following situations:

(A) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction.

(B) To protect against or prevent actual or potential fraud or unauthorized transactions.

(C) For required institutional risk control or for resolving consumer disputes or inquiries.

(D) To persons holding a legal or beneficial interest relating to the consumer.

(E) To persons acting in a fiduciary or representative capacity on behalf of the consumer.

(3) To provide information to the following:

(A) Insurance rate advisory organizations.

(B) Guaranty funds or agencies.

(C) Agencies that are rating a licensee.

(D) Persons who are assessing the licensee's compliance with industry standards.

(E) The licensee's attorneys, accountants, and auditors.

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission, self-regulatory organization or for an investigation on a matter related to public safety.

(5) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) or from a consumer report reported by a consumer reporting agency.

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit.

(7) To comply with or respond to any of the following:

(A) Federal, state, or local laws, rules, and other applicable legal requirements.

(B) Properly authorized civil, criminal, or regulatory investigation, or subpoena, or summons by federal, state, or local authorities.

(C) Judicial process or governmental regulatory authorities having jurisdiction over a licensee for examination, compliance, or other purposes as authorized by law.

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

(b) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under section 6(f) of this rule. *(Department of Insurance; 760 IAC 1-67-14)*

760 IAC 1-67-15 Protection of Fair Credit Reporting Act

Authority: IC 27-1-3-7
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 15. Nothing in this rule shall be construed to modify, limit, or supersede the operation of the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of the Fair Credit Reporting Act. *(Department of Insurance; 760 IAC 1-67-15)*

760 IAC 1-67-16 Nondiscrimination

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 16. A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information. *(Department of Insurance; 760 IAC 1-67-16)*

760 IAC 1-67-17 Sample clauses

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 17. (a) A licensee may use the following statement, as applicable, to meet the requirements of section 5(a)(1) of this rule, to describe the categories of nonpublic personal information the licensee collects, "We collect nonpublic personal information about you from the following sources:

(1) Information we receive from you on applications or other forms.

(2) Information about your transactions with us, our affiliates or others.
(3) Information we receive from a consumer reporting agency.".

(b) A licensee may use one (1) of the statements in this subsection, as applicable, to meet the requirement of section 5(a)(2) of this rule, to describe the categories of nonpublic personal information the licensee discloses. The licensee may use either of the following statements if it discloses nonpublic personal information other than as permitted by the exceptions in sections 12 through 14 of this rule:
(1) "We may disclose the following kinds of nonpublic personal information about you:
(A) Information we receive from you on applications or other forms, such as (provide illustrative examples, such as 'your name, address, Social Security number, assets, income, and beneficiaries').
(B) Information about your transactions with us, our affiliates, or others, such as (provide illustrative example, such as 'your policy coverage, premiums, and payment history').
(C) Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as 'your creditworthiness and credit history').".
(2) "We may disclose all of the information that we collect, as described (describe location in the notice, such as 'above' or 'below').".

(c) A licensee may use the statement is this subsection, as applicable, to meet the requirements of section 5(a)(2), 5(a)(3), and 5(a)(4) of this rule, to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use the following statement if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in sections 13 and 14 of this rule, "We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.".

(d) A licensee may use the statement in this subsection, as applicable, to meet the requirement of section 5(a)(3) of this rule, to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. The following statement may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 12 through 14 of this rule, as well as when permitted by the exceptions in sections 13 and 14 of this rule, "We may disclose nonpublic personal information about you to the following types of third parties:
(1) Financial service providers, such as (provide illustrative examples, such as 'life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents').
(2) Nonfinancial companies, such as (provide illustrative examples, such as 'retailers, direct marketers, airlines, and publishers').
(3) Others, such as (provide illustrative examples, such as 'nonprofit organizations').
We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.".

(e) A licensee may use one (1) of the statements in this subsection, as applicable, to meet the requirements of section 5(a)(5) of this rule, related to the exception for service providers and joint marketers in section 12 of this rule. The licensee may use either of the following statements, if a licensee discloses nonpublic personal information under the exception in section 12 of this rule, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted:
(1) "We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:
(A) Information we receive from you on applications or other forms, such as (provide illustrative examples, such as 'your name, address, Social Security number, assets, income, and beneficiaries').
(B) Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as 'your policy coverage, premium, and payment history').
(C) Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as 'your creditworthiness and credit history').".
(2) "We may disclose all of the information we collect, as described (describe location in the notice, such as 'above' or 'below') to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.".

(f) A licensee may use the statement in this subsection, as applicable, to meet the requirement of section 5(a)(6) of this rule, to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method or methods by which the consumer may exercise that right. The licensee may use the followings statement if the licensee discloses nonpublic personal information other than as permitted by the exceptions in sections 12 through 14 of this rule, "If you prefer that we do not disclose nonpublic personal financial information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than

disclosures required by law). If you wish to opt out of disclosures to third parties, you may (describe reasonable means of opting out, such as 'call the following toll free number: (insert number)').".

(g) A licensee may use the following statement, as applicable, to meet the requirement of section 5(a)(8) of this rule to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information, "We restrict access to nonpublic personal information about you to (provide an appropriate description, such as 'those employees who need to know that information to provide products or services to you'). We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.". *(Department of Insurance; 760 IAC 1-67-17)*

760 IAC 1-67-18 Violation

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-4-1; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 18. A violation of this rule is deemed an unfair method of competition and an unfair and deceptive act and practice in the business of insurance subject to the provisions of IC 27-4-1. *(Department of Insurance; 760 IAC 1-67-18)*

760 IAC 1-67-19 Severability

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 19. If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected. *(Department of Insurance; 760 IAC 1-67-19)*

760 IAC 1-67-20 Effective date

Authority: IC 27-1-3-7; IC 27-1-15.5-16; IC 27-1-25-14; IC 27-1-33-11; IC 27-8-16-14; IC 27-8-17-20; IC 27-8-19.8-26; IC 27-13-10-13
Affected: IC 27-1-7-2; IC 27-1-12-1; IC 27-1-13-1; IC 27-1-15.5; IC 27-1-17-2; IC 27-1-23; IC 27-1-25; IC 27-1-33; IC 27-6-6; IC 27-6-9; IC 27-7-3; IC 27-8-1; IC 27-8-16; IC 27-8-17; IC 27-8-19.8; IC 27-10-3; IC 27-13

Sec. 20. (a) This rule is effective thirty (30) days after filing with the secretary of state's office. In order provide sufficient time for licensees to establish policies and systems to comply with the requirements of this rule, the commissioner has extended the time for compliance with this rule until July 1, 2001.

(b) By July 1, 2001, a licensee shall provide an initial notice, as required by section 3 of this rule, to consumers who are the licensee's customers on July 1, 2001.

(c) Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provision of section 12(a) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000. *(Department of Insurance; 760 IAC 1-67-20)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 22, 2001 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed new rule regarding the treatment of an individual's nonpublic personal information by all licensees of the department of insurance. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance

TITLE 876 INDIANA REAL ESTATE COMMISSION

Proposed Rule
LSA Document #00-260

DIGEST

Amends 876 IAC 1-1-3 to revise and update the definition of selling principal broker. Amends 876 IAC 1-1-23 to require a mutual release or court order to authorize a listing and selling principal broker to release earnest money. Amends 876 IAC 1-1-24 to extend requirements that apply to listing principal brokers in closings to selling principal brokers. Amends 876 IAC 1-1-26 to add Internet advertising to the advertising requirements. Amends 876 IAC 2-17-3 to divide the real estate broker and salesperson examination into two sections and to require that applicants pass both sections and to require applicants for licensure as a broker or salesperson by reciprocity to pass the Indiana licensure law section of the examination. Amends 876 IAC 4-1-3 to allow individuals once approved to instruct for continuing education sponsors to teach for other sponsors without further approval. Amends 876 IAC 4-2-1 to require licensees to present photo identification and broker or

salesperson pocket card for admission to a continuing education course. Amends 876 IAC 4-2-4 to change the course subjects allowed satisfying the ten hour continuing education requirements under IC 25-34.1-9-11(2). Amends 4-2-5 to eliminate mechanical skills as a course that does not qualify as instructional or contributing to professional competency. Amends 876 IAC 4-2-9 to require licensees to obtain 16 hours of continuing education to reactivate an inactive license during a two year licensure period. Partially effective 30 days after filing with the secretary of state and partially effective October 1, 2001.

876 IAC 1-1-3	**876 IAC 4-1-3**
876 IAC 1-1-23	**876 IAC 4-2-1**
876 IAC 1-1-24	**876 IAC 4-2-4**
876 IAC 1-1-26	**876 IAC 4-2-5**
876 IAC 2-17-3	**876 IAC 4-2-9**

SECTION 1. 876 IAC 1-1-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-3 Definitions
Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1
Affected: IC 25-34.1-3-2; IC 25-34.1-5

Sec. 3. (a) The definitions in this section apply throughout this title.

(b) "Person" means an individual, partnership, or corporation.

(c) "Commission" means the Indiana real estate commission.

(d) "Real estate" means any right, title, or interest in real property.

(e) "License" means a right to perform, for compensation, any of the acts provided in IC 25-34.1-3-2, as evidenced by a valid pocket card issued by the Indiana real estate commission.

(f) "Licensee" means one who holds a valid salesperson or broker license issued by the commission.

(g) "Course approval" means approval of a broker or a salesperson course granted under IC 25-34.1-5 and 876 IAC 2, which is not expired, suspended, or revoked.

(h) "Licensing agency" means the Indiana professional licensing agency.

(i) "Principal broker" means the individual broker, including the broker designated as representative of a corporation or partnership whom the commission shall hold responsible for the actions of licensees who are assigned to the principal broker.

(j) "Listing principal broker" means a principal broker who has a written contract with an owner, allowing him to sell, buy, trade, exchange, option, lease, rent, manage, list, or appraise real estate.

(k) "Selling principal broker" means
~~(1)~~ a principal broker who is acting ~~as a subagent of the listing principal broker,~~ on behalf of **the buyer and who provides an accepted offer to purchase to** the seller. ~~or~~
~~(2) a buyer agent or limited agent engaged by the buyer who provides an acceptable offer to purchase to the seller.~~

(l) "Managing broker" means a broker who manages a branch office.

(m) "Branch office" means a real estate broker's office other than his principal place of business.

(n) "Broker" means any person, partnership, or corporation, who holds a valid broker's license issued by the commission. A person who, for consideration:
(1) sells;
(2) buys;
(3) trades;
(4) exchanges;
(5) options;
(6) leases;
(7) rents;
(8) manages;
(9) lists;
(10) refers; or
(11) Appraises;
real estate or negotiates or offers to perform any of those acts.

(o) "Salesperson" means any person holding a valid salesperson's license issued by the commission. An individual, other than a broker, who, for consideration and in association with and under the auspices of a principal broker:
(1) sells;
(2) buys;
(3) trades;
(4) exchanges;
(5) options;
(6) leases;
(7) rents;
(8) manages; or
(9) lists;
real estate or negotiates or offers to perform any of those acts.

(p) "Broker-salesperson" means an individual who meets all the legal requirements of a broker but elects to operate in association with and under the auspices of a principal broker to whom his license is assigned. The broker-salesperson is subject to all rules and regulations applying to salespersons in association with a principal broker.

(q) "He" shall also mean she.

(r) "Owner/seller" means that person or persons of record in titled to or having an interest in the property or their duly authorized representative.

(s) "Referral" means the act of recommending or referring a sales lead that develops a client or customer.

(t) "Referral service" means a company or part of a company or franchise system established for the purpose of recommending or referring client or customer leads to other brokers. *(Indiana Real Estate Commission; Rule 4; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 794; filed Mar 13, 1980, 2:30 p.m.: 3 IR 646; filed Dec 11, 1986, 10:40 a.m.: 10 IR 874; filed Dec 9, 1988, 1:25 p.m.: 12 IR 925, eff Jan 8, 1989; errata filed Dec 21, 1988, 3:45 p.m.: 12 IR 1209; errata filed May 15, 1989, 2:20 p.m.: 12 IR 1907; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2785)*

SECTION 2. 876 IAC 1-1-23 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-23 Written offers to purchase; disposition of money received

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1
Affected: IC 25-34.1-2-5

Sec. 23. Any and all written offers to purchase or authorization to purchase shall be communicated to the seller for his **or her** formal acceptance or rejection immediately upon receipt of such offer, and such offers or authorizations shall be made in quadruplicate, one **(1)** copy to the prospective purchasers at the time of signing, one **(1)** copy for the principal broker's files, one **(1)** copy to the sellers, and one **(1)** copy to be returned to the purchasers after acceptance or rejection. The listing principal broker shall, on or before the next two (2) banking days after acceptance of the offer to purchase by the seller, do one **(1)** of the following:

~~(a)~~ **(1)** Deposit all ~~monies~~ **money** received in connection with a transaction in his **or her** escrow/trust account.

~~(b)~~ **(2)** Delegate the responsibility to the selling principal broker to deposit ~~said monies~~ **the money** in the selling broker's escrow/trust account. ~~But~~

In any event, the ~~Indiana real estate~~ commission shall hold the listing principal broker responsible for ~~said monies.~~ **the money.** In the event the earnest money deposit is other than cash, this fact shall be communicated to the seller prior to his **or her** acceptance of the offer to purchase, and such fact shall be shown in the earnest money receipt. All ~~monies~~ **money** shall be retained in the escrow/trust account so designated until disbursement thereof is properly authorized. **The listing and selling principal brokers holding any earnest money are not required to make payment to the purchasers or sellers when a real estate transaction is not consummated unless the parties enter into a mutual release of the funds or a court issues an order for payment.** *(Indiana Real Estate Commission; Rule 24; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 800; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878)*

SECTION 3. 876 IAC 1-1-24 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-24 Closing statements

Authority: IC 25-34.1-2-5; IC 25-34.1-2-5.1
Affected: IC 25-34.1-2-5

Sec. 24. Every listing **and selling** principal broker shall deliver to ~~the seller~~ **their client** in every real estate transaction wherein he **or she** acts as real estate broker, at the time such transaction is consummated, a complete detailed closing statement showing all of the receipts and disbursements handled by such principal broker. The listing **and selling** principal broker shall retain true copies of such statements in his **or her** files for at least five (5) years. The listing **and selling** principal broker or his ~~license~~ **or her licensed** associate acting on his **or her** behalf, shall attend all closings. *(Indiana Real Estate Commission; Rule 25; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 801; filed Jan 16, 1979, 11:55 a.m.: 2 IR 315; filed Dec 11, 1986, 10:40 a.m.: 10 IR 878)*

SECTION 4. 876 IAC 1-1-26 IS AMENDED TO READ AS FOLLOWS:

876 IAC 1-1-26 Advertising requirements; name of principal broker; prohibitions

Authority: IC 25-34.1-2-5
Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 26. Any display, classified advertising, signs, **Internet advertising,** or business cards, which carries a licensee's name must contain the name of the principal broker or firm with whom the licensee is associated, and except for business cards, said principal broker or firm's name must be in letters larger than those used in advertising the licensee's name. All advertising shall be under the direct supervision and in the name of the principal broker or firm; a salesperson's name may not be a part of the firm name. Any advertising by a principal broker must reveal the surname of said broker as it appears on the broker's license issued by the ~~Indiana real estate~~ commission. Any television or radio advertising ~~which~~ **that** carries the name of any licensee associated with a principal broker must carry the name of the principal broker or firm, as licensed by the commission. A licensee shall not advertise in a manner indicating that the property is being offered by a private party not engaged in the real estate business, and shall use no advertising where only a post office box number, telephone number, or street address appears. No licensee shall place a sign on any property, advertise or offer any property for sale, lease, or rent without the written consent of the seller or ~~his~~ **the seller's** authorized agent. *(Indiana Real Estate Commission; Rule 27; filed Sep 28, 1977, 4:30 p.m.: Rules and Regs. 1978, p. 801; filed Mar 13, 1980, 2:30 p.m.: 3 IR 648; filed Dec 11, 1986, 10:40 a.m.: 10 IR 879)*

SECTION 5. 876 IAC 2-17-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 2-17-3 Examinations; passing score

Authority: IC 25-34.1-2-5
Affected: IC 25-34.1-3-3.1; IC 25-34.1-3-4.1

Sec. 3. (a) The broker and salesperson examinations shall be standardized examinations for the testing of real estate brokers and salespersons. **The examination required of all applicants for licensure as a broker or salesperson shall be divided into the following two (2) sections:**

(1) General real estate practices.

(2) Indiana licensure law.

(b) Applicants for licensure by reciprocity shall only be required to take and pass the Indiana licensure section of the broker or salesperson exam, whichever is applicable.

~~(b)~~ **(c)** The examination will be electronically administered by the commission's duly appointed agent. However, individuals who are unable to take the electronically administered examination because of a disability may apply to take it on paper.

~~(c)~~ **(d)** An applicant shall be deemed to have passed the examination upon attaining a score of at least seventy-five percent (75%) **on each section.**

(e) If the applicant passes one (1) section of the examination, the applicant is credited for the section the applicant has passed and is not required to retake the section of the examination unless the applicant is retaking the examination after having to again comply with the education requirement in section 1(c) of this rule. *(Indiana Real Estate Commission; 876 IAC 2-17-3; filed Dec 9, 1988, 1:25 p.m.: 12 IR 936, eff Jan 8, 1989; errata filed Dec 21, 1988, 3:45 p.m.: 12 IR 1209; filed Dec 6, 1994, 4:57 p.m.: 18 IR 1286)*

SECTION 6. 876 IAC 4-1-3 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-1-3 Significant changes

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1

Sec. 3. (a) Any significant changes in the operation of the approved sponsor must be approved by the commission prior to the effective date of the change. Any change in the course outline must be approved by the commission prior to the course being offered or given. The commission shall review the changes to determine whether or not the sponsor shall continue to be approved.

(b) Significant changes shall include the following:

(1) Change in ownership of the sponsor, including changes in the officers and directors of the corporation.

(2) A new school director.

(3) A new instructor.

(4) Any change in course outline.

(c) Once a continuing education instructor has been approved through the continuing education sponsor, the instructor is approved to teach for all continuing education sponsors.

(d) Notwithstanding subsection (b)(3), an instructor who has already been approved under this section or section 2 of this rule for another approved sponsor shall not be considered a new instructor. *(Indiana Real Estate Commission; 876 IAC 4-1-3; filed Dec 1, 1993, 10:30 a.m.: 17 IR 766; filed Jun 14, 1995, 11:00 a.m.: 18 IR 2790)*

SECTION 7. 876 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-1 Continuing education requirements

Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-9-11; IC 25-34.1-9-19; IC 25-34.1-10

Sec. 1. (a) Every licensed real estate broker and salesperson who has not been granted an inactive license under IC 25-34.1-3-10 or a waiver under IC 25-34.1-9-19 must complete during each two (2) year licensure period at least sixteen (16) hours of the approved education ~~requirement~~ **requirements** under IC 25-34.1-9-11 and this article which are given by commission approved sponsors of courses in order to qualify for license renewal.

(b) Licensees attending continuing education courses shall present a government-issued photo identification and a real estate broker or salesperson pocket card for inspection by the course sponsor or a person designated by the course sponsor.

~~(b)~~ **(c)** Measurements and reporting shall be in full hours with a fifty (50) minute instruction period equaling one (1) hour.

~~(c)~~ **(d)** A course shall be a minimum of a two (2) hour instruction period.

~~(d)~~ **(e)** A minimum of two (2) hours and no more than eight (8) hours of instruction may be offered in a one (1) day course.

~~(e)~~ **(f)** A licensee shall not be entitled to any continuing education credit for a course unless the licensee attends the entire course.

~~(f)~~ **(g)** There shall be no minimum requirement of numbers of credit hours to be completed in each single year of the two (2) year licensure period.

~~(g)~~ **(h)** Any continuing education credit accumulated above the minimum requirement for a two (2) year licensure period shall not be carried forward to the next two (2) year licensure period.

~~(h)~~ **(i)** A licensee who attends the same approved continuing education course more than once in the same two (2) year licensure period is only entitled to continuing education credit for one (1) course.

~~(i)~~ **(j)** An instructor shall be entitled to continuing education credit for courses the instructor teaches. However, an instructor may not be credited for more than six (6) hours of credit for instructing in any two (2) year licensure period. Instructors may not receive credit for repeated courses. *(Indiana Real Estate Commission; 876 IAC 4-2-1; filed Dec 1, 1993, 10:30 a.m.: 17 IR 767)*

SECTION 8. 876 IAC 4-2-4 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-4 Curricula under IC 25-34.1-9-11(2)
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-9-11

Sec. 4. In addition to the subjects listed in IC 25-34.1-9-11(2), the following course subjects shall be allowed toward meeting the required ten (10) hours of course work:

(1) Subjects listed in IC 25-34.1-9-11(1).

(2) Property management, including lease agreements, accounting procedures, and management contracts.

(3) Timeshares, condominiums, and cooperatives.

(4) Industrial brokerage and leasing.

(5) Investment real estate analysis.

(6) Any course approved by the commission relating to real estate practices.

(Indiana Real Estate Commission; 876 IAC 4-2-4; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768)

SECTION 9. 876 IAC 4-2-5 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-5 Course qualifications
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-5

Sec. 5. (a) All courses must be instructional and contribute to professional competence in the practice of real estate.

(b) The following courses do not qualify:

(1) Real estate broker or salesperson prelicensing courses under IC 25-34.1-5.

(2) Examination preparation.

~~(3) Mechanical skills.~~

~~(4)~~ **(3)** Sales meetings.

~~(5)~~ **(4)** In-house training sessions.

~~(6)~~ **(5)** Correspondence.

~~(7)~~ **(6)** Motivational classes or seminars.

(Indiana Real Estate Commission; 876 IAC 4-2-5; filed Dec 1, 1993, 10:30 a.m.: 17 IR 768)

SECTION 10. 876 IAC 4-2-9 IS AMENDED TO READ AS FOLLOWS:

876 IAC 4-2-9 License activation
Authority: IC 25-34.1-9-21
Affected: IC 25-34.1-9-11

Sec. 9. (a) In order to reactivate an inactive license at the time of license renewal, the licensee must have obtained all sixteen (16) hours of continuing education which would have been required for renewal had the license been active.

(b) In order to reactivate an inactive license during a two (2) year licensure period, the licensee must obtain the ~~six (6)~~ **sixteen (16)** hours of continuing education required by IC 25-34.1-9-11(1) **and IC 25-34.1-9-11(2)** for that two (2) year licensure period and pay a ten dollar ($10) fee.

~~(c) A licensee who has reactivated the licensee's license during a two (2) year licensure period under subsection (b) must obtain the ten (10) hours of continuing education required by IC 25-34.1-9-11(2) in order to renew the license at the end of the two (2) year licensure period.~~ *(Indiana Real Estate Commission; 876 IAC 4-2-9; filed Dec 1, 1993, 10:30 a.m.: 17 IR 769)*

SECTION 11. SECTION 5 of this document takes effect October 1, 2001.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on June 28, 2001 at 11:00 a.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Indiana Real Estate Commission will hold a public hearing on proposed amendments to revise the definition of selling principal broker, to require mutual release or court to authorize the release of earnest money, to extend the requirements of listing principal brokers in closings to selling principal brokers, add Internet advertising to advertisement requirements, to revise incompetent practice concerning inducing parties to breach contracts, to require applicants applying for reciprocity to pass the Indiana licensure law portion of the examination, to divide the real estate broker and salesperson examination into two sections, to require applicants to pass both portions, to allow approved continuing education instructors to teach for other sponsors, to require photo identification or pocket card for admission to a continuing education course, to change the courses allowed to satisfy the ten hour continuing education requirement, to eliminate mechanical skills as a course that does not contribute to professional competency, and to require licensees to sixteen hours of continuing education to reactivate an inactive license. Copies of these rules are now on file at the Indiana Government Center-South, 302 West Washington Street, Room E012 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Gerald H. Quigley
Executive Director
Indiana Professional Licensing Agency